a bill to amend the Internal Revenue Code of 1986 to provide an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability.

S. 535

At the request of Mr. BINGAMAN, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 535, a bill to amend title XIX of the Social Security Act to clarify that Indian women with breast or cervical cancer who are eligible for health services provided under a medical care program of the Indian Health Service or of a tribal organization are included in the optional medicaid eligibility category of breast or cervical cancer patients added by the Breast and Cervical Cancer Prevention and Treatment Act of 2000.

S. 540

At the request of Mr. DEWINE, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from Massachusetts (Mr . KERRY) were added as cosponsors of S. 540, a bill to amend the Internal Revenue Code of 1986 to allow as a deduction in determining adjusted gross income the deduction for expenses in connection with services as a member of a reserve component of the Armed Forces of the United States, to allow employers a credit against income tax with respect to employees who participate in the military reserve components, and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

S. 721

At the request of Mr. HUTCHINSON, the names of the Senator from Missouri (Mr. BOND) and the Senator from North Carolina (Mr. EDWARDS) were added as cosponsors of S. 721, a bill to amend the Public Health Service Act to establish a Nurse Corps and recruitment and retention strategies to address the nursing shortage, and for other purposes.

S. 775

At the request of Mrs. LINCOLN, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 775, a bill to amend title XVIII of the Social Security Act to permit expansion of medical residency training programs in geriatric medicine and to provide for reimbursement of care coordination and assessment services provided under the medicare program.

S. 1140

At the request of Mr. HATCH, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1140, a bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts.

S. 1278

At the request of Mrs. LINCOLN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1278, a bill to amend the Internal Revenue Code of 1986 to allow a United States independent film and television production wage credit.

S. 1299

At the request of Mr. DOMENICI, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 1299, a bill to amend the Safe Drinking Water Act to establish a program to provide assistance to small communities for use in carrying out projects and activities necessary to achieve or maintain compliance with drinking water standards.

S. 1434

At the request of Mr. REID, his name was added as a cosponsor of S. 1434, a bill to authorize the President to award posthumously the Congressional Gold Medal to the passengers and crew of United Airlines flight 93 in the aftermath of the terrorist attack on the United States on September 11, 2001.

S. 1499

At the request of Mr. KERRY, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 1499, a bill to provide assistance to small business concerns adversely impacted by the terrorist attacks perpetrated against the United States on September 11, 2001, and for other purposes.

S. 1519

At the request of Mr. HARKIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1519, a bill to amend the Consolidated Farm and Rural Development Act to provide farm credit assistance for activated reservists.

S. 1563

At the request of Mrs. HUTCHISON, the name of the Senator from New Hampshire (Mr. SMITH of New Hampshire) was added as a cosponsor of S. 1563, a bill to establish a coordinated program of science-based countermeasures to address the threats of agricultural bioterrorism.

S. 1589

At the request of Mr. ROCKEFELLER, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 1589, a bill to amend title XVIII of the Social security Act to expand medicare benefits to prevent, delay, and minimize the progression of chronic conditions, establish payment incentives for furnishing quality services to people with serious and disabling chronic conditions, and develop national policies on effective chronic condition care, and for other purposes.

S. 1593

At the request of Mr. JEFFORDS, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 1593, a bill to authorize the Administrator of the Environmental Protection Agency to establish a grant program to support research projects on critical infrastructure protection for water supply systems, and for other purposes.

S. CON. RES. 79

At the request of Mr. THURMOND, the names of the Senator from North Carolina (Mr. HELMS), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Colorado (Mr. CAMPBELL), and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. Con. Res. 79, a concurrent resolution expressing the sense of Congress that public schools may display the words ''God Bless America'' as an expression of support for the Nation.

AMENDMENT NO. 2021

At the request of Ms. COLLINS, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of amendment No. 2021 intended to be proposed to H.R. 3061, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2002, and for other purposes.

AMENDMENT NO. 2050

At the request of Ms. COLLINS, the names of the Senator from Rhode Island (Mr. CHAFEE), the Senator from Massachusetts (Mr. KERRY) , the Senator from Minnesota (Mr. WELLSTONE) , the Senator from Maryland (Mr. SARBANES), and the Senator from Maine (Ms. SNOWE) were added as cosponsors of amendment No. 2050 proposed to H.R. 3061, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2002, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 1609. A bill to amend the National Trails System Act to direct the Secretary of the Interior to conduct a study on the feasibility of designating the Metacomet-Monadnock-Mattabesett Trail extending through western Massachusetts and central Connecticut as a national historic trail; to the Committee on Energy and Natural Resources.

Mr. KERRY. Mr. President, I rise today to introduce a bill along with my senior Senator, Senator KENNEDY of Massachusetts, to amend the National Trails System Act to conduct a study on the feasibility of designating the Metacomet-Monadnock-Mattabesett Trail extending through western Massachusetts and central Connecticut as a national historic trail.

The National Trails System was created in 1968 to provide outdoor recreation and to conserve the scenic, historic, natural, and cultural qualities of the areas through which trails more than 100 miles long pass. Trails provide opportunities for outdoor recreation to citizens in Massachusetts and around the country. People enjoy bicycling, cross-country skiing, day hiking, jogging, camping, and long-distance backpacking. In addition, National Scenic Trails promote tourism and foster economic development. National trails

can only be authorized and designated by Acts of Congress.

The Metacomet-Monadnock-Mattabesett Trail plays an important role in land protection and wildlife habitat preservation. It is a system of trails and potential trails extending southward approximately 180 miles from the Metacomet-Monadnock Trail in western Massachusetts, across central Connecticut on the Metacomet Trail and the Mattabesett Trail, and ending at Long Island Sound. Dozens of waterfalls, natural areas, and wildlife viewing spots can be found along the route. There are dramatic traprock ledges and summits that provide tremendous views of the Connecticut River Valley. At a time when the Northeast corridor is faced with overdevelopment, designating the Metacomet-Monadnock-Mattabesett as a national trail would help protect it, facilitate better planning for power lines, pipelines, and roads, and help maintain natural habitats through the financial and technological assistance of the National Park Service, nonprofit organizations, and local volunteers.

I would like to share a few of the comments from organizations in Massachusetts and Connecticut that support this legislation. Peter Westover, the conservation director for the town of Amherst, wrote to express strong support for the trail. He is confident that there will be widespread support among trail managers and trail users throughout the region. Both Durand, the Massachusetts Secretary of Environmental Affairs, wrote that the Metacomet-Monadnock portion of the trail is an important recreational, scenic, and historic resource that could be significantly enhanced by this project. The Massachusetts director of the Nature Conservancy, Wayne Klockner, expressed his strong support for the trail, writing that he supports the benefits that designation can bring to a fragile area and that he looks forward to increased land protection, funding and technical expertise. From Connecticut, Leslie Kane, chairman of the Guilford Land Acquisition Committee, supports the trail because it will preserve Connecticut's natural heritage for all people to enjoy. These comments represent only a handful of the letters of support that my colleagues and I have received.

Establishing a new national scenic trail is typically a four-step process, which, on average, can take 10 years to complete. In 10 years, given the rapid development in the Northeast, entire landscapes and habitats can change and become endangered. The first step in the process to establish a new national trail is amending the National Trails System Act to allow for a feasibility study. Senator KENNEDY and I are asking today that we take that first step and get started protecting the natural heritage of this small part of New England.

By Mr. LEAHY:

S. 1611. A bill to restore Federal remedies for infringements of intellectual property by States, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, in June 1999, the U.S. Supreme Court issued a pair of decisions that altered the legal landscape with respect to intellectual property. I am referring to the Florida Prepaid and College Savings Bank cases. The Court ruled in these cases that States and their institutions cannot be held liable for patent infringement and other violations of the Federal intellectual property laws, even though they can and do enjoy the full protection of those laws for themselves.

About 4 months after the Court ruled in these cases, I introduced a bill that responded to the Court's decisions. The Intellectual Property Restoration Act of 1999 was designed to restore Federal remedies for violations of intellectual property rights by States.

I regret that the Senate Judiciary Committee did not consider my legislation during the last Congress, and that the Senate has yet to give any attention to the nearly 2-year-old Supreme Court decisions that opened such a troubling loophole in our Federal intellectual property laws. We should delay no further.

Today, I am introducing the Intellectual Property Protection Restoration Act of 2001, IPPRA. This legislation builds on my earlier proposal and on the helpful comments I received on that proposal from legal experts across the country. In particular, I would like to thank Justin Hughes, David Carson, Steve Tepp, Michael Kirk, Michael Klipper, and John Kent for their assistance in improving and refining this legislation. I also want to thank the House sponsors of the counterpart bill, HOWARD COBLE and HOWARD BERMAN, who are the chairman and ranking member of the Subcommittee on Courts, the Internet, and Intellectual Property.

The IPPRA has two essential components. First, it places States on an equal footing with private parties by eliminating any damages remedy for infringement of State-owned intellectual property unless the State has waived its immunity in Federal suits for infringement of privately owned intellectual property. Second, it improves the limited remedies that are available to enforce a nonwaiving State's obligations under Federal law and the United States Constitution. I will discuss both provisions in more detail later in these remarks.

Innovation and creativity have been the fuel of our national economic boom over the past decade. The United States now leads the world in computing, communications and biotechnologies, and American authors and brand names are recognized across the globe.

Our national prosperity is, first and foremost, a tribute to American ingenuity. But it is also a tribute to the wisdom of our Founding Fathers, who made the promotion of what they called ''Science and the Useful Arts'' a national project, which they constitutionally assigned to Congress. And it is no less of a tribute to the successive Congresses and administrations of both parties who have striven to provide real incentives and rewards for innovation and creativity by providing strong and even-handed protection to intellectual property rights. Congress passed the first Federal patent law in 1790, and the U.S. Government issued its first patent the same year, to Samuel Hopkins of my home State of Vermont. The first Federal copyright law was also enacted in 1790, and the first Federal trademark laws date back to the 1870s.

The Supreme Court has long recognized that intellectual property rights bear the hallmark of true constitutional property rights, the right of exclusion against the world, and are therefore protection against appropriation both by individuals and by government. Consistent with this understanding of intellectual property, Congress has long ensured that the rights secured by the Federal intellectual property laws were enforceable against the Federal Government by waiving the government's immunity in suits alleging infringements of those rights.

No doubt Congress would have legislated similarly with respect to infringements by State entities and bureaucrats had there been any doubt that they were already fully subject to Federal intellectual property laws. But there was no doubt. States had long enjoyed the benefits of the intellectual property laws on an equal footing with private parties.

By the same token, and in accordance with the fundamental principles of equity on which our intellectual property laws are founded, the States bore the burdens of the intellectual property laws, being liable for infringements just like private parties. States were free to join intellectual property markets as participants, or to hold back from commerce and limit themselves to a narrower governmental role. The intellectual property right of exclusion meant what it said and was enforced even-handedly for public and private entities alike.

This harmonious state of affairs ended in 1985, with the Supreme Court's announcement of the so-called ''clear statement'' rule in Atascadero State Hospital versus Scanlon. The Court in Atascadero held that Congress must express its intention to abrogate the States' 11th Amendment immunity ''in unmistakable language in the statute itself.'' A few years later in Pennsylvania versus Union Gas Co., the Supreme Court assured us that if the intent to abrogate were expressed clearly enough, it would be honored.

Following Atascadero, some courts held that States and State entities and

officials could escape liability for patent, copyright and trademark infringement because the patent, copyright and trademark laws lacked the clear statement of congressional intent that was now necessary to abrogate State sovereign immunity.

To close this new loophole in the law, Congress promptly did precisely what the Supreme Court had told us was necessary. In 1990 and 1992, Congress passed three laws—the Patent and Plant Variety Protection Remedy Clarification Act, the Copyright Remedy Clarification Act, and the Trademark Remedy Clarification Acts. The sole purpose of the Clarification Acts was to make it absolutely, unambiguously, 100 percent clear that Congress intended the patent, copyright and trademark laws to apply to everyone, including the States, and that Congress did not intend the States to be immune from liability for money damages. Each of the three Clarification Acts passed unanimously.

In 1996, however, by a five-to-four vote, the Supreme Court in Seminole Tribe of Florida versus Florida reversed its earlier decision in Union Gas and held that Congress lacked authority under article I of the Constitution to abrogate the States' 11th amendment immunity from suit in Federal court.

Then, on June 23, 1999, by the same bare majority, the Supreme Court in Florida Prepaid Postsecondary Education Expense Board versus College Savings Bank told us that it did not really mean what it said in Atascadero and invalidated the Patent and Plant Variety Protection Remedy Clarification Act. In the companion case decided on the same day, College Savings Bank versus Florida Prepaid Postsecondary Education Expense Board, the same five Justices held that the Trademark Remedy Clarification Act also failed to abrogate State sovereign immunity.

The Florida Prepaid decisions have been the subject of bipartisan criticism. In a floor statement on July 1, 1999, I highlighted the anti-democratic implications of the approach of the activist majority of the Supreme Court, who have left constitutional text behind, ripped up precedent, and treated Congress with less respect than that due to an administrative agency in their haste to impose their natural law notions of sovereignty as a barrier to democratic regulation. I also noted that ''the Court's decisions will have far-reaching consequences about how * * * intellectual property rights may be protected against even egregious infringements and violations by the states.''

One of my Republican colleagues on the Judiciary Committee, Senator SPECTER, expressed similar concerns in a floor statement on August 5, 1999. He noted that the Court decisions ''leave us with an absurd and untenable state of affairs,'' where ''states will enjoy an enormous advantage over their private sector competitors.''

Charles Fried, a professor at Harvard Law School and former Solicitor General during the Reagan administration, has called the Florida Prepaid decisions ''truly bizarre.'' He observed in an op-ed piece in the New York Times:

> [The Court's decisions] did not question that states are subject to the patent and trademark laws of the United States. It's just that when a state violates those laws—as when it uses a patented invention without permission and without paying for it—the patent holder cannot sue the state for infringement. So a state hospital can manufacture medicines patented by others and sell or use them, and state schools and universities can pirate textbooks and software, and the victims cannot sue for infringement.
>
> It is hard to see what sense this makes, and the claim that ''the Constitution made me do it'' is particularly unconvincing. The 11th Amendment does protect states from suits in Federal courts by residents of other states—a provision almost certainly not intended to protect states from suits based on Federal law.

Not surprisingly, alarm has also been expressed in the business community about the potential of the Court's recent decisions to harm intellectual property owners in a wide variety of ways. A commentary in Business Week offered these cautions:

> Watch out if you publish software that someone at a state university wants to copy for free . . . Watch out if you own a patent on a medical procedure that some doctor in a state medical school wants to use. Watch out if you've invested heavily in a great trademark, like Nike's Swoosh, and a bureaucrat decides his state program would be wildly promoted if it used the same mark.

I believe that these concerns are real. As Congress acknowledged when it waived Federal sovereign immunity in this area, it would be naive to imagine that reliance on the commercial decency of the government and its myriad agencies and officials would provide the security needed to promote investment in research and development and to facilitate negotiation in the exclusive licensing arrangements that are often necessary to bring valuable products and creations to market. Indeed, the good intentions of government may be beside the point, if businesses are unwilling to enter into agreements because one side cannot be bound by the law.

Since the Court issued its decisions in June 1999, intellectual property scholars and practitioners across the country have come together to explore ways for Congress to restore protection for federal intellectual property rights as against the States. The Patent and Trademark Office hosted a particularly enlightening conference in March 2000, in cooperation with the American Intellectual Property Law Association and the Intellectual Property Section of the American Bar Association. I commend the PTO for taking the initiative on this important issue.

More recently, in September 2001, the General Accounting Office released a report requested by Senator ORRIN HATCH on State Immunity in Infringement Actions. The GAO's research confirmed that, after Florida Prepaid, owners of intellectual property have few alternatives or remedies available against State infringements. A State cannot be sued in Federal court for damages except in the unlikely event that it waives its sovereign immunity. As for the State courts, there is little chance of success with infringement-type a actions for patents and copyrights because of Federal judicial preemption and an absence of State-recognized causes of action. Furthermore, even if infringement suits can be brought in State court, it may not be possible to bring them against States that have governmental immunity shielding them from suit in their own courts.

What I have just described is a series of dead ends for intellectual property owners. That is why the two Federal agencies with expertise in intellectual property matters, the U.S. Copyright Office and the U.S. Patent and Trademark Office, have expressed their support for corrective legislation by Congress. As the Copyrights Office told the GAO, ''Only in this way can the proper balance, and basic fairness, be restored.''

I hope we can all agree on the need for congressional action on this issue. We need to assure American inventors and investors, and our foreign trading partners, that as State involvement in intellectual property becomes ever greater in the new information economy, U.S. intellectual property rights are backed by legal remedies.

This is important as a matter of economics: Our national economy depends on real and effective intellectual property rights. It is also important as a matter of justice: In conceding that the States are constitutionally bound to respect Federal intellectual property rights but invalidating the remedies Congress has created to enforce those rights, the Court has jeopardized one of the basic principles that distinguishes our Constitution from the constitution of the old Soviet Union, the principle that where there is a right, there must also be a remedy.

It is also important as a matter of foreign relations: American trading interests have been well served by our strong and consistent advocacy of effective intellectual property protections in treaty negotiations and other international fora, and those efforts could be jeopardized by the loophole in U.S. intellectual property enforcement that the Supreme Court has created.

Like most of the constitutional experts who have examined the issue, I have no doubt that several constitutional mechanisms remain open to Congress to restore substantial protection for patents, copyrights and trademarks. The Supreme Court's hypertechnical constitutional interpretations require us to jump through some technical hoops of our own, but that the exercise is now not merely worthwhile, but essential to safeguard both U.S. prosperity and the continued authority of Congress.

My bill is based on a simple premise: That there is no inherent, ''natural law'' entitlement to Federal intellectual property rights and remedies. In discussing the policies underlying the intellectual property laws, the Supreme Court has emphasized that intellectual property is not a right but a privilege, and that it is conditioned by a public purpose. For example, the Court wrote in Mercoid Corp. versus Mid-Continent Invest Co., a 1944 case, that ''The grant of a patent is the grant of a special privilege 'to promote the Progress of Science and useful Arts,' '' and that ''It is the public interest which is dominant in the patent system.'' Similarly, in discussing the copyright laws in Fogerty versus Fantasy, Inc, the Court underscored that ''the monopoly privileges that Congress has authorized, while intended to motivate the creative activity of authors and inventors by the provision of a special reward, are limited in nature and must ultimately serve the public good.''

The Constitution empowers but does not require Congress to make intellectual property rights and remedies available, and Congress should do so in a manner that encourages and protects innovation in the public and private sector alike.

States and their institutions, especially State Universities, benefit hugely from the Federal intellectual property laws. All 50 States own or have obtained patents, some hold many hundreds of patents. States also hold other intellectual property rights secured by Federal law, and the trend is toward increased participation by the States in commerce involving intellectual property.

Principles of State sovereignty tell us that States and their instrumentalities are entitled to a free and informed choice of whether or not to participate in the Federal intellectual property system, subject only to their constitutional obligations.

Equity and common sense tell us that one who chooses to enjoy the benefits of a law, whether it be a Federal research grant or the multimillion-dollar benefits of Federal intellectual property protections, should also bear its burdens.

Sound economics and traditional notions of federalism tell us that it is appropriate for the Federal Government to assist and encourage the sovereign States in their sponsorship of whatever innovation and creation they freely choose to sponsor by giving them intellectual property protection and, on occasion, funding, so long as the States hold up their end of the bargain by honoring the exclusive rights of other intellectual property owners.

The IPPRA builds on these principles. In order to promote cooperative federalism in the intellectual property arena, it provides reasonable incentives for states to waive their immunity in intellectual property cases and participate in our national intellectual property project on equal terms with private parties. States that choose not to waive their immunity within 2 years after enactment of the IPPRA would continue to enjoy many of the benefits of the Federal intellectual property system; however, like private parties that sue non-waiving states for infringement, nonwaiving States that sue private parties for infringement could not recover any money damages that would otherwise be available under Federal law. That is because Federal intellectual property that has been owned by a nonwaiving State would be short one ''stick'' from the usual bundle of rights accorded by Federal law: The ability to sue for damages under Federal law when the intellectual property has been infringed.

This scheme is plainly authorized by the letter of the Constitution. Article I empowers Congress to ''promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive right to their respective Writings and Discoveries.'' Incident to this power, Congress may attach conditions on the receipt of exclusive intellectual property rights. Indeed, we have always attached certain conditions, such as the requirement of public disclosure of an invention at the Patent and Trademark Office in order to obtain a patent.

My proposal is also consistent with the spirit of federalism, as interpreted by the Supreme Court, because it gives State entities a free, informed and meaningful choice to waive or not to waive immunity at any time. The condition imposed on receipt of federal benefits by the IPPRA, submitting to suit under laws that are already binding on the States, is not onerous, nor does it co-opt any state resources to the service of Federal policy. It simply levels the intellectual property playing field.

Congress may attach conditions on a State's receipt of Federal intellectual property protection under its Article I intellectual property power just as Congress may attach conditions on a State's receipt of Federal funds under its Article I spending power. Either way, the power to attach conditions to the Federal benefit is an integral part of the greater power to deny the benefit altogether. Either way, the State has a choice, to forgo the Federal benefit and exercise its sovereign power however it wishes subject to the Constitution, or to take the benefit and exercise its sovereign power in the manner requested by Congress.

Three Federal appeals courts have applied similar reasoning in connection with the 1996 Telecommunications Act. The Courts of Appeals for the Fifth, Seventh, Tenth Circuits have reasoned that, because Congress was under no obligation to allow States to participate in the regulatory scheme established by the 1996 Act, Congress could validly condition a state commission's decision to exercise regulatory authority under the Act on its waiving sovereign immunity.

This seems like plain common sense to me. It would be a truly bizarre reading of the Constitution to say that it is up to Congress whether or not to let States participate in telecom regulation or in the intellectual property regime, but that if we choose to let them participate, we cannot hold them accountable for their actions.

Given the choice between opting in to the intellectual property laws and forging some intellectual property protection under the Federal laws, States and their institutions will, I hope, choose to opt in. The benefit—being able to recover damages for an infringement—is significant, while the burden—consenting to be sued for future State infringements—is slight. Most States already respect intellectual property rights and will seldom find themselves in infringement suits.

However, some State entities and officials have violated intellectual property rights in the past, and the massive growth of both intellectual property and state participation in the intellectual property marketplace that we are seeing in the new economy give ample cause for concern that such violations will continue. Now that the Supreme Court has seemingly given the States carte blanche to violate intellectual property rights free from any adverse financial consequences so long as they stand on their newly augmented sovereign immunity, the prospect of States violating Federal law and then asserting immunity is too serious to ignore.

The IPPRA therefore also provides for the limited set of remedies that the Supreme Court's new jurisprudence leaves available to Congress to enforce a nonwaiving State's obligations under Federal law and the United States Constitution. The key point here is that, while the Court struck down our prior effort to enforce the intellectual property laws themselves by authorizing actions for damages against the states, it nonetheless acknowledged Congress' power to authorize actions for injunctions and actions to enforce constitutional rights related to intellectual property.

First, for the avoidance of doubt, the IPPRA ensures the full availability of prospective equitable relief to prevent States from violating or exceeding their rights under Federal intellectual property laws. As the Supreme Court expressly acknowledged in its Seminole Tribe decision in 1996, such relief is available, notwithstanding any assertion of State sovereign immunity, under what is generally known as the doctrine of Ex parte Young.

Second, to address the harm done to the rights of intellectual property owners before they can secure an injunction, the IPPRA also provides a damages remedy to the full extent of Congress' power to enforce the constitutional rights of intellectual property owners. Under the Supreme Court's recent decisions, this remedy is necessarily limited to the redress of constitutional violations, not violations of

the Federal intellectual property laws themselves. However, the Supreme Court has reaffirmed on may occasions that the intellectual property owner's right of exclusion is a property right fully protected from governmental violation under the Fifth amendment's takings clause and under the 14th amendment's due process clause.

The constitutional remedy provided by the IPPRA closely resembles the remedy that Congress provided decades ago for deprivations of Federal rights by persons acting under color of State law. The bill does not expand the property rights secured by the Federal intellectual property laws—these laws are already binding on the States' nor does the bill interfere with any governmental authority to regulate businesses that own such rights. It simply restores the ability of private persons to enforce such rights against the States.

I view this bill as an exercise in cooperative federalism. Clear, certain, and uniform national rules protecting Federal intellectual property rights benefit everyone: Consumers, businesses, the Federal Government and the States. The IPPRA preserves States' rights, and gives States a free choice. At the same time, it ensures effective protection for individual constitutional rights closing the loophole created by the Supreme Court of Federal rights unsupported by effective remedies. We unanimously passed more sweeping legislation in the early 1990s, but were thwarted by Supreme Court's shifting jurisprudence. The IPPRA is designed to restore the benefits we sought to provide intellectual property owners while meeting the Court's new jurisprudential requirements.

There are to be sure, other approaches that Congress could take to address the problems created by the Court's decisions. In consultation with experts in intellectual property law and constitutional law, I reviewed several alternatives before settling on the IPPRA's approach. In the end, I concluded that the approach I have outlined is the best way to achieve a solution that meets any constitutional concerns, fosters State-Federal cooperation, and encourages American innovation and creativity to providing certain and effective intellectual property protection.

when I first introduced the IPPRA in 1999, it prompted a flurry of constructive comments and suggestions on how the legislation could be improved. I look forward to considering further refinements to the bill as the legislative process moves forward.

I ask unanimous consent that the text of the bill and a section-by-section summary of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1611

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Intellectual Property Protection Restoration Act of 2001''.

(b) REFERENCES.—Any reference in this Act to the Trademark Act of 1946 shall be a reference to the Act entitled ''An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) help eliminate the unfair commercial advantage that States and their instrumentalities now hold in the Federal intellectual property system because of their ability to obtain protection under the United States patent, copyright, and trademark laws while remaining exempt from liability for infringing the rights of others;

(2) promote technological innovation and artistic creation in furtherance of the policies underlying Federal laws and international treaties relating to intellectual property;

(3) reaffirm the availability of prospective relief against State officials who are violating or who threaten to violate Federal intellectual property laws; and

(4) abrogate State sovereign immunity in cases where States or their instrumentalities, officers, or employees violate the United States Constitution by infringing Federal intellectual property.

SEC. 3. INTELLECTUAL PROPERTY REMEDIES EQUALIZATION.

(a) AMENDMENT TO PATENT LAW.—Section 287 of title 35, United States Code, is amended by adding at the end the following:

''(d)(1) No remedies under section 284 or 289 shall be awarded in any civil action brought under this title for infringement of a patent issued on or after January 1, 2002, if a State or State instrumentality is or was at any time the legal or beneficial owner of such patent, except upon proof that—

''(A) on or before the date the infringement commenced or January 1, 2004, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

''(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

''(2) The limitation on remedies under paragraph (1) shall not apply with respect to a patent if—

''(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2002; or

''(B) the party seeking remedies was a bona fide purchaser for value of the patent, and, at the time of the purchase, did not know and was reasonably without cause to believe that a State or State instrumentality was once the legal or beneficial owner of the patent.

''(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the action. If raised before January 1, 2004, the court may stay the proceeding for a reasonable time, but not later than January 1, 2004, to afford the State an opportunity to waive its immunity as provided in paragraph (1).''.

(b) AMENDMENT TO COPYRIGHT LAW.—Section 504 of title 17, United States Code, is amended by adding at the end the following:

''(e) LIMITATION ON REMEDIES IN CERTAIN CASES.—

''(1) No remedies under this section shall be awarded in any civil action brought under this title for infringement of an exclusive right in a work created on or after January 1, 2002, if a State or State instrumentality is or was at any time the legal or beneficial owner of such right, except upon proof that—

''(A) on or before the date the infringement commenced or January 1, 2004, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

''(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

''(2) The limitation on remedies under paragraph (1) shall not apply with respect to an exclusive right if—

''(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2002; or

''(B) the party seeking remedies was a bona fide purchaser for value of the exclusive right, and, at the time of the purchase, did not know and was reasonably without cause to believe that a State or State instrumentality was once the legal or beneficial owner of the right.

''(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the action. If raised before January 1, 2004, the court may stay the proceeding for a reasonable time, but not later than January 1, 2004, to afford the State an opportunity to waive its immunity as provided in paragraph (1).''.

(c) AMENDMENT TO TRADEMARK LAW.—Section 35 of the Trademark Act of 1946 (15 U.S.C. 1117) is amended by adding at the end the following:

''(e) LIMITATION ON REMEDIES IN CERTAIN CASES.—

''(1) No remedies under this section shall be awarded in any civil action arising under this Act for a violation of any right of the registrant of a mark registered in the Patent and Trademark Office on or after January 1, 2002, or any right of the owner of a mark first used in commerce on or after January 1, 2002, if a State or State instrumentality is or was at any time the legal or beneficial owner of such right, except upon proof that—

''(A) on or before the date the violation commenced or January 1, 2004, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

''(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

''(2) The limitation on remedies under paragraph (1) shall not apply with respect to a right of the registrant or owner of a mark if—

''(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2002; or

''(B) the party seeking remedies was a bona fide purchaser for value of the right, and, at the time of the purchase, did not know and was reasonably without cause to believe that a State or State instrumentality was once the legal or beneficial owner of the right.

''(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the

action. If raised before January 1, 2004, the court may stay the proceeding for a reasonable time, but not later than January 1, 2004, to afford the State an opportunity to waive its immunity as provided in paragraph (1).''.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO PATENT LAW.—

(A) IN GENERAL.—Section 296 of title 35, United States Code, is repealed.

(B) TABLE OF SECTIONS.—The table of sections for chapter 29 of title 35, United States Code, is amended by striking the item relating to section 296.

(2) AMENDMENTS TO COPYRIGHT LAW.—

(A) IN GENERAL.—Section 511 of title 17, United States Code, is repealed.

(B) TABLE OF SECTIONS.—The table of sections for chapter 5 of title 17, United States Code, is amended by striking the item relating to section 511.

(3) AMENDMENTS TO TRADEMARK LAW.—Section 40 of the Trademark Act of 1946 (15 U.S.C. 1122) is amended—

(A) by striking subsection (b);

(B) in subsection (c), by striking ''or (b)'' after ''subsection (a)''; and

(C) by redesignating subsection (c) as subsection (b).

SEC. 4. CLARIFICATION OF REMEDIES AVAILABLE FOR STATUTORY VIOLATIONS BY STATE OFFICERS AND EMPLOYEES.

In any action against an officer or employee of a State or State instrumentality for any violation of any of the provisions of title 17 or 35, United States Code, the Trademark Act of 1946, or the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), remedies shall be available against the officer or employee in the same manner and to the same extent as such remedies are available in an action against a private individual under like circumstances. Such remedies may include monetary damages assessed against the officer or employee, declaratory and injunctive relief, costs, attorney fees, and destruction of infringing articles, as provided under the applicable Federal statute.

SEC. 5. LIABILITY OF STATES FOR CONSTITUTIONAL VIOLATIONS INVOLVING INTELLECTUAL PROPERTY.

(a) DUE PROCESS VIOLATIONS.—Any State or State instrumentality that violates any of the exclusive rights of a patent owner under title 35, United States Code, of a copyright owner, author, or owner of a mask work or original design under title 17, United States Code, of an owner or registrant of a mark used in commerce or registered in the Patent and Trademark Office under the Trademark Act of 1946, or of an owner of a protected plant variety under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), in a manner that deprives any person of property in violation of the fourteenth amendment of the United States Constitution, shall be liable to the party injured in a civil action in Federal court for compensation for the harm caused by such violation.

(b) TAKINGS VIOLATIONS.—

(1) IN GENERAL.—Any State or State instrumentality that violates any of the exclusive rights of a patent owner under title 35, United States Code, of a copyright owner, author, or owner of a mask work or original design under title 17, United States Code, of an owner or registrant of a mark used in commerce or registered in the Patent and Trademark Office under the Trademark Act of 1946, or of an owner of a protected plant variety under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), in a manner that takes property in violation of the fifth and fourteenth amendments of the United States Constitution, shall be liable to the party injured in a civil action in Federal court for compensation for the harm caused by such violation.

(2) EFFECT ON OTHER RELIEF.—Nothing in this subsection shall prevent or affect the ability of a party to obtain declaratory or injunctive relief under section 4 of this Act or otherwise.

(c) COMPENSATION.—Compensation under subsection (a) or (b)—

(1) may include actual damages, profits, statutory damages, interest, costs, expert witness fees, and attorney fees, as set forth in the appropriate provisions of title 17 or 35, United States Code, the Trademark Act of 1946, and the Plant Variety Protection Act; and

(2) may not include an award of treble or enhanced damages under section 284 of title 35, United States Code, section 504(d) of title 17, United States Code, section 35(b) of the Trademark Act of 1946 (15 U.S.C. 1117 (b)), and section 124(b) of the Plant Variety Protection Act (7 U.S.C. 2564(b)).

(d) BURDEN OF PROOF.—In any action under subsection (a) or (b)—

(1) with respect to any matter that would have to be proved if the action were an action for infringement brought under the applicable Federal statute, the burden of proof shall be the same as if the action were brought under such statute; and

(2) with respect to all other matters, including whether the State provides an adequate remedy for any deprivation of property proved by the injured party under subsection (a), the burden of proof shall be upon the State or State instrumentality.

(e) EFFECTIVE DATE.—This section shall apply to violations that occur on or after the date of enactment of this Act.

SEC. 6. RULES OF CONSTRUCTION.

(a) JURISDICTION.—The district courts shall have original jurisdiction of any action arising under this Act under section 1338 of title 28, United States Code.

(b) BROAD CONSTRUCTION.—This Act shall be construed in favor of a broad protection of intellectual property, to the maximum extent permitted by the United States Constitution.

(c) SEVERABILITY.—If any provision of this Act or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected.

INTELLECTUAL PROPERTY PROTECTION RESTORATION ACT OF 2001—SECTION-BY-SECTION SUMMARY

Recent Supreme Court decisions invalidated prior efforts by Congress to abrogate state sovereign immunity in actions arising under the federal intellectual property laws. The Court's decisions give states an unfair advantage in the intellectual property marketplace by shielding them from money damages when they infringe the rights of private parties, while leaving them free to obtain money damages when their own rights are infringed. These decisions also have the potential to impair the rights of private intellectual property owners, discourage technological innovation and artistic creation, and compromise the ability of the United States to fulfill its obligations under a variety of international treaties. The Intellectual Property Protection Restoration Act of 2001 creates reasonable incentives for states to waive their immunity in intellectual property cases and participate in the intellectual property marketplace on equal terms with private parties. The bill also provides new remedies for state infringements that rise to the level of constitutional violations.

Sec. 1. Short title; references.—This Act may be cited as the ''Intellectual Property Protection Restoration Act of 2001.

Sec. 2. Purposes.—Legislative purposes in support of this Act.

Sec. 3. Intellectual property remedies equalization.—Places states on an equal footing with private parties by eliminating any damages remedy for infringement of state-owned intellectual property unless the state has waived its immunity from any damages remedy for infringement of privately-owned intellectual property. Intellectual property that the state owned before the enactment of this Act is not affected.

Sec. 4. Clarification of remedies available for statutory violations by state officers and employees.—Affirms the availability of injunctive relief against state officials who violate the federal intellectual property laws. Such relief is authorized under the doctrine of Ex parte Young, 209 U.S. 123 (1908), which held that an individual may sue a state official for prospective relief requiring the state official to cease violating federal law, even if the state itself is immune from suit under the eleventh amendment. This section also affirms that state officials may be personally liable for violations of the intellectual property laws.

Sec. 5. Liability of states for constitutional violations involving intellectual property.—Establishes a right to compensation for state infringements of intellectual property that rise to the level of constitutional violations. Compensation shall be measured by the statutory remedies available under the federal intellectual property laws, but may not include treble damages.

Sec. 6. Rules of construction.—Establishes rules for interpreting this Act.

By Mr. THOMPSON:

S. 1612. A bill to provide Federal managers with tools and flexibility in areas such as personnel, budgeting, property management and disposal, and for other purposes; to the Committee on Governmental Affairs.

By Mr. THOMPSON:

S. 1613. A bill to provide for expedited congressional consideration of ''Freedom to Manage'' legislative proposals transmitted by the President to Congress to eliminate or reduce barriers to efficient government operations that are posed by laws that apply to one or more agencies, including government-wide laws; to the Committee on Governmental Affairs.

Mr. THOMPSON. Mr. President, I am introducing legislation today that was referred to Congress by President Bush. The legislation seeks to extensively reform management of the Federal Government. I applaud the Administration's attention to the issue of government reform, and I will work with my colleagues on the Governmental Affairs Committee and in Congress to enact this important package, because it includes comprehensive reforms that will make government work better.

The Governmental Affairs Committee has documented the problems affecting Executive Branch operations for some time, and I am impressed with the President's attention to these issues at this critical time in our Nation's history. The President's package of management reform proposals will allow government managers to carry out their critical responsibilities for the American public more effectively. It's obvious the Administration understands how very important government

reform is to ensuring that the government can accomplish its varied missions.

The legislation, which includes the Freedom to Manage Act and the Managerial Flexibility Act, makes it easier for Executive Branch management to increase accountability, reduce unnecessary costs, and manage for results. The Managerial Flexibility Act will help the government recruit and retain people with needed skills, increase the flexibility of federal property management, and allow agencies to budget for results. The Freedom to Manage Act would allow other reform proposals, submitted to the Congress by the Administration, to be considered expeditiously by the Congress.

I ask unanimous consent that a summary of this important legislation be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

FREEDOM TO MANAGE REFORM PACKAGE—A SUMMARY

Freedom to Manage Act of 2001

This legislation establishes a procedure under which heads of departments and agencies can identify statutory barriers to good management. Congress, in turn, would quickly consider those obstacles and act to remove them.

Managerial Flexibility Act of 2001

This legislation provides federal managers with increased flexibility in managing personnel; assigns agencies the responsibility for funding the full government share of the accruing cost of all retirement and retiree health care benefits for Federal employees; and gives agencies greater flexibility in managing property.

Reform Personnel Management. This proposal gives Federal agencies and managers increased discretion and flexibility in attracting, managing, and retaining a high quality workforce. It empowers Federal agencies to determine when, if, and how they might offer new employee incentives, and it enhances the agencies' authority to use recruitment, retention, and relocation bonuses to compete better with the private sector. The bill permits agencies to develop alternative personnel systems to attract and hire employees that best fit the position, and it will enable managers to offer early retirement packages. By enacting important changes to the Senior Executive Service, this proposal also permits high-level Federal managers to be treated more like their private sector counterparts, by results-based performance standards that hold them accountable.

Budgeting and Managing for Results.—Full Funding for Federal Retiree Costs: This proposal charges Federal agencies the full accruing cost of all retirement and retiree health care benefits for Federal employees. This proposal is the first government-wide step in linking the full cost of resources used with the results achieved, which will make management in the Executive Branch more performance-oriented. This proposal will not change any of the benefits provided by these programs, and will not change the level of employee contributions.

Reform Federal Property Management.—The Federal Government owns or controls more than 24 million acres of land and facilities, but existing rules restrict the government's ability to consolidate or release underperforming property. In many instances, Federal agencies lack the incentives and authority to renovate the property or tap its equity. This proposal facilitates a total asset management approach to Federal property issues by: improving life cycle planning and management; allowing greater flexibility to optimize asset performance; and providing incentives for better property management. Modernizing these processes enhances government-wide property management, bringing the practices federal agencies use to manage their assets into the 21st century.

By Mr. SESSIONS (for himself, Mrs. HUTCHISON, Mr. EDWARDS, Mr. SHELBY, Mr. HOLLINGS, Mr. LOTT, Mr. CLELAND, Mr. COCHRAN, Mr. HELMS, and Mr. INHOFE):

S. 1614. A bill to provide for the preservation and restoration of historic buildings at historically women's public colleges or universities; to the Committee on Energy and Natural Resources.

Mr. SESSIONS. Mr. President, today I rise to re-introduce legislation to help preserve the heritage of eight historic women's colleges and universities. The legislation would authorize the Secretary of the Interior to provide restoration and preservation grants for historic buildings and structures at eight historically women's colleges or universities. The bill directs the Secretary to award $16 million annually from fiscal years 2002 through 2006 to the eight institutions. Funds would be awarded from the National Historic Preservation Fund and are subject to a 50 percent matching requirement from non-federal sources.

The sweeping changes of the industrial revolution prompted Congress in 1862, with further action in 1887 and 1890, to provide Federal support for the establishment of agricultural and mechanical colleges with growing emphasis on industrial and technical education. Unfortunately, these ''land-grant'' schools were only for men, leaving women untrained as they entered the expanded work force. Women's advocates, such as Miss Julia Tutwiler in Alabama, immediately recognized the need for institutions where women could receive an equal education. Beginning in 1836, eight institutions in seven separate States were established as industrial schools for women. These institutions include the Mississippi University for Women, in Alabama the University of Montevallo, Georgia College and State University, Wesleyan College also in Georgia, Winthrop University in South Carolina, University of North Carolina at Greensboro, Texas Women's University, and the University of Science and Arts of Oklahoma. These eight institutions remain open, providing a liberal arts education for both men and women, but retain significant historical and academic features of those pioneering efforts to educate women. Despite their continued use, many of the structures located on these campuses are facing destruction or closure because preservation funds are not available. My legislation would enable these buildings to be preserved and maintained by providing funding for the historic buildings located at the colleges and universities that I have identified. Funding would originate from the National Historic Preservation Fund. No more than $16 million would be available and would be distributed in equal amounts to the eight institutions. My bill also provides that a 50 percent matching contribution from non-federal sources and assures that alterations in properties using the funds are subject to approval from the Secretary of the Interior and reasonable public access for interpretive and educational purposes.

These historically women's colleges and universities have contributed significantly to the effort to attain equal opportunity through postsecondary education for women, low income individuals, and educationally disadvantaged Americans. I believe it is our duty to do all we can to preserve these historic institutions and I ask my colleagues for their support.

By Mr. TORRICELLI (for himself and Mr. CORZINE):

S. 1616. A bill to provide for interest on late payments of health care claims; to the Committee on Finance.

Mr. TORRICELLI. Mr. President, I rise today to introduce the ''Prompt Payment Bill''. This legislation addresses the need for the managed care industry to not only take responsibility for their payments on time, but to face specific penalties if they do not do so.

HMOs are one of the few entities that continue to be shielded from lawsuits. It is shocking that under current federal and most state laws, there are no consequences when HMOs fail to pay their bills in a timely manner. HMOs even have the right to drop out of Medicare simply because they are unsatisfied with the rate, let alone the timeliness, of what the government is paying them. It is time that this lack of accountability is addressed and significantly increased.

In my State of New Jersey, there is in fact a ''prompt pay'' law that requires HMOs to pay their bills in thirty days from receiving a claim from a beneficiary, hospital or health care provider. However, a 1998 survey of twenty-four New Jersey hospitals found that more than $150 million in HMO payments were held up for sixty days or longer. That same year, sixty percent of New Jersey hospitals lost money, over $172 million in statewide losses. HMOs simply face no consequences from state regulatory agencies and the enforcement mechanisms currently in place are too weak. If we let this continue, we will jeopardize the care that people receive from their health care providers.

For these reasons, I am introducing the ''Prompt Payment Bill''. This amendment will move HMOs considerably closer to assuming the financial responsibilities for the health care coverage they are being paid to provide.

Specifically, it will call for a ten-percent interest penalty per year on any payment not made within 45 days. If the HMO continues to be delinquent, beneficiaries or health care providers can bring the HMO to court to make them pay their bills.

I urge my colleagues to join me in my efforts in making the managed care industry significantly more accountable to their beneficiaries.

By Mr. DODD (for himself, Mr. WARNER, Mr. SARBANES, Mr. SCHUMER, Mrs. MURRAY, Mr. CLELAND, Mr. CORZINE, and Mr. DASCHLE):

S. 1617. A bill to amend the Workforce Investment Act of 1998 to increase the hiring of firefighters, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise today with my colleagues Senator WARNER, Senator SARBANES, Senator SCHUMER, Senator MURRAY, Senator CLELAND, and Senator CORZINE to introduce legislation to ensure that America's firefighters have the staffing they need to safely do their jobs.

It has been nearly seven weeks since the terrorist attacks on the World Trade Center and the Pentagon. We are still assessing the damage done by those attacks, but one thing is already absolutely certain, the world has changed. And as we begin to figure out all of the ways in which the world has changed, we are starting to reassess our national priorities. We, as a Nation, are taking stock of our strengths and vulnerabilities, and we're identifying ways to improve our capacity to deal with the threats that became so apparent on September 11.

One of the fundamental new realities that we find ourselves facing is that America needs to be better prepared to respond to deliberate acts of mass destruction. We need to be better prepared to deal with acts of bioterrorism and we need to be prepared to help save people even if they are deliberately attacked with toxic chemical weapons. In short, we need to be prepared for what seemed unthinkable.

The legislation that we are proposing will help ensure that America's local fire agencies have the human resources that they need to meet the challenges which they will address as America faces the challenge of an extended war against terrorism.

Just as we have called up the National Guard to meet the increased need for more manpower in the military, we need to make a national commitment to hire the firefighters necessary to protect the American people here on the home front. The legislation that we are proposing will put 75,000 new firefighters on America's streets over the next seven years.

Many of us in Congress have long understood that America's firefighters make extraordinary contributions to their communities everyday. But on September 11, we got a glimpse of a larger role that the men and women of the fire service, not to mention police forces play. The national role of our firefighters has become apparent. They have made the nation proud.

Despite the increasingly important role firefighters play both in our local communities and as part of our national homeland defense system, communities over the years have not maintained the level of staffing necessary to ensure the safety of the public or even of the firefighters themselves.

Since 1970, the number of firefighters as a percentage of the U.S. workforce has steadily declined. Today in America there is only one firefighter for every 280 citizens. We have fewer firefighters per capita than nurses and police officers. We need to turn this trend around, now more than ever.

Understaffing is dangerous for the public and for firefighters. Chronic understaffing means that many firefighters do not have the backup and on-the-ground support they need to do their jobs safely. The sad consequence is that about every three days we lose a firefighter in the line of duty. And on some days, the losses are unimaginably high.

We learned on September 11 that the American homeland is not immune from unthinkable acts of violence. Knowing that, we have an obligation to take every reasonable step to mitigate the potential damage that may be caused by future attacks.

Again, just as we have called up the National Guard to meet the increased need for more manpower in the military, we need to make a national commitment to hire firefighters to protect the American people. In these difficult times, it is both necessary and proper for us to send for reinforcements for our domestic defenders. The SAFER Act will make that commitment.

This legislation honors America's firefighters. It acknowledges the men and women who charge up the stairs while everybody else is running down them. But it is more than that. This legislation is an investment in America's security, an investment that will rebuild public confidence and help reassure Americans that their homes and businesses are as well protected as possible.

I ask unanimous consent that the text of the bill be printed in the RECORD.

S. 1617

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE.

Title III of the Workforce Investment Act of 1998 (Public Law 105–220; 112 Stat. 1080) is amended by adding at the end the following:

"Subtitle E—Staffing for Adequate Fire and Emergency Response

"SEC. 351. SHORT TITLE.

"This subtitle may be cited as the 'Staffing for Adequate Fire and Emergency Response Act of 2001' or as the 'SAFER Act of 2001'.

"SEC. 352. PURPOSES.

"The purposes of this subtitle are—

"(1) to expand on the firefighter assistance grant program under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229), in order to ensure adequate funding to increase the number of firefighting personnel throughout the Nation;

"(2) to substantially increase the hiring of firefighters so that communities can—

"(A) meet industry minimum standards for providing adequate protection from acts of terrorism and hazards; and

"(B) enhance the ability of firefighter units to save lives, save property, and effectively respond to all types of emergencies; and

"(3) to promote that substantial increase in hiring by establishing a program of grants, authorized for 7 years, to provide direct funding to States, units of local government, and Indian tribal organizations for firefighter salaries and benefits.

"SEC. 353. DEFINITIONS.

"In this subtitle:

"(1) ELIGIBLE ENTITY.—The term 'eligible entity' means—

"(A) a State, a unit of local government, a tribal organization, or another public entity; or

"(B) a multi-jurisdictional or regional consortia of entities described in subparagraph (A).

"(2) FIREFIGHTER.—The term 'firefighter' has the meaning given the term 'employee in fire protection activities' in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

"(3) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms 'Indian tribe' and 'tribal organization' have the meanings given the terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(4) SECRETARY.—The term 'Secretary' means the Secretary of Labor, acting after consultation with the Director of the Federal Emergency Management Agency.

"(5) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"SEC. 354. AUTHORITY TO MAKE GRANTS.

"(a) DEFINITION.—In this section, the term 'qualifying entity', used with respect to a fiscal year, means any eligible entity (including a State) that has submitted an application under section 355 for the fiscal year that meets the requirements of this subtitle and such additional requirements as the Secretary may prescribe.

"(b) GRANT AUTHORIZATION.—The Secretary may make grants to eligible entities to pay for the Federal share of the cost of carrying out projects to hire firefighters.

"(c) MINIMUM AMOUNT.—

"(1) AMOUNT.—For any fiscal year, the Secretary shall ensure that the qualifying entities in each State shall receive, through grants made under this section, a total amount that is not less than ½ of 1 percent of the amount appropriated under section 362 for the fiscal year.

"(2) EXCEPTION.—Paragraph (1) shall not apply for a fiscal year if the Secretary makes a grant under this section to every qualifying entity for the fiscal year.

"(d) GRANT PERIODS.—The Secretary may make grants under this section for periods of 3 years.

"(e) FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share of the cost of carrying out a project to hire firefighters under this subtitle shall be not more than 75 percent.

''(2) NON-FEDERAL SHARE.—The non-Federal share shall be provided—

''(A) in cash;

''(B) in the case of a State or unit of local government, from assets received through an asset forfeiture program; or

''(C) in the case of a tribal organization or the Bureau of Indian Affairs, from any Federal funds made available for firefighting functions to assist an Indian tribe.

''(3) WAIVER.—The Secretary may waive the requirements of paragraphs (1) and (2) for an eligible entity.

''SEC. 355. APPLICATIONS.

''(a) IN GENERAL.—To be eligible to receive a grant under this subtitle, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may prescribe.

''(b) CONTENTS.—Each such application shall—

''(1) include a long-term strategy and detailed implementation plan, for the hiring to be conducted under the grant, that reflects consultation with community groups and appropriate private and public agencies and reflects consideration of a statewide strategy for such hiring;

''(2) specify the reasons why the entity is unable to hire sufficient firefighters to address the entity's needs, without Federal assistance;

''(3)(A) specify the average number of firefighters employed by the entity during the fiscal year prior to the fiscal year for which the application is submitted; and

''(B) outline the initial and planned level of community support for implementing the strategy and plan, including the level of financial and in-kind contributions or other tangible commitments;

''(4)(A) specify plans for obtaining necessary support and continuing the employment of a greater number of firefighters than the number specified under paragraph (3)(A), following the conclusion of Federal assistance under this subtitle; and

''(B) include an assurance that the entity will continue the employment of firefighters hired with funds made available through the grant for at least 1 year after the end of the grant period; and

''(5) include assurances that the entity will, to the extent practicable, seek, recruit, and hire members of racial and ethnic minority groups and women in order to increase the ranks of minorities and women within the entity's firefighter units.

''(c) SMALL JURISDICTIONS.—Notwithstanding any other provision of this subtitle, the Secretary may waive 1 or more of the requirements of subsection (b), and may make special provisions to facilitate the expedited submission, processing, and approval of an application under this section, for an eligible entity that is a unit of local government, or an eligible entity serving a fire district, that has jurisdiction over an area with a population of less than 50,000.

''(d) PREFERENCE.—In awarding grants under this subtitle, the Secretary—

''(1) shall give preference to a unit of local government; and

''(2) may give preference, where feasible, to an eligible entity that submits an application containing a plan that—

''(A) provides for hiring (including rehiring) career firefighters; and

''(B) requires the entity to contribute a non-Federal share of more than 25 percent of the cost of carrying out a project to hire the firefighters.

''(e) STATE AND LOCAL APPLICATIONS.—If a unit of local government for a community, and the State in which the community is located, submit applications under this section for a fiscal year to carry out a project in a community, and the unit of local government and State are qualifying entities under section 354(a), the Secretary—

''(1) shall make a grant under this subtitle to the unit of local government for that year; and

''(2) shall not make a grant under this subtitle to the State to carry out a project in that community for that year.

''SEC. 356. USE OF FUNDS.

''(a) IN GENERAL.—An eligible entity that receives a grant under this subtitle shall use the funds made available through the grant to hire career firefighters. The funds may only be used to increase the number of firefighters employed by the agency from the number specified under section 355(b)(3)(A). The funds may be used for salaries and benefits for the firefighters.

''(b) HIRING COSTS.—

''(1) FISCAL YEAR 2002.—For fiscal year 2002, in hiring any 1 firefighter, the entity may not use more than $90,000 of such funds.

''(2) SUBSEQUENT YEARS.—For each subsequent fiscal year, in hiring any 1 firefighter, the entity may not use more than $90,000 of such funds, increased or decreased by the same percentage as the percentage by which the Consumer Price Index for All Urban Consumers (United States city average), published by the Secretary of Labor, has increased or decreased by September of the preceding fiscal year from such Index for September 2001.

''(3) WAIVERS.—The Secretary may waive the requirements of paragraph (1) or (2) for an eligible entity.

''(c) SUPPLEMENT, NOT SUPPLANT.—Funds appropriated pursuant to the authority of this subtitle shall be used to supplement and not supplant other Federal, State, and local public funds expended to hire firefighters.

''SEC. 357. TECHNICAL ASSISTANCE.

''The Secretary may provide technical assistance to eligible entities to further the purposes of this Act.

''SEC. 358. MONITORING AND EVALUATIONS.

''(a) MONITORING COMPONENTS.—Each project funded through a grant made under this subtitle shall contain a monitoring component, developed pursuant to regulations established by the Secretary. The monitoring required by this subsection shall include systematic identification and collection of data about the project throughout the period of the project and presentation of such data in a usable form.

''(b) EVALUATION COMPONENTS.—The Secretary may require that selected grant recipients under this subtitle conduct local evaluations or participate in a national evaluation, pursuant to regulations established by the Secretary. Such local or national evaluations may include assessments of the implementation of different projects. The Secretary may require selected grant recipients under this subtitle to conduct local outcome evaluations to determine the effectiveness of projects under this subtitle.

''(c) PERIODIC REPORTS.—The Secretary may require a grant recipient under this subtitle to submit to the Secretary the results of the monitoring and evaluations required under subsections (a) and (b) and such other data and information as the Secretary determines to be reasonably necessary.

''(d) REVOCATION OR SUSPENSION OF FUNDING.—If the Secretary determines, as a result of the monitoring or evaluations required by this section, or otherwise, that a grant recipient under this subtitle is not in substantial compliance with the terms and requirements of an approved grant application submitted under section 355, the Secretary may revoke the grant or suspend part or all of the funding provided under the grant.

''SEC. 359. ACCESS TO DOCUMENTS.

''For the purpose of conducting an audit or examination of a grant recipient that carries out a project under this subtitle, the Secretary and the Comptroller General of the United States shall have access to any pertinent books, documents, papers, or records of the grant recipient and any State or local government, person, business, or other entity, that is involved in the project.

''SEC. 360. REPORT TO CONGRESS.

''Not later than September 30, 2008, the Secretary shall submit a report to Congress concerning the experiences of eligible entities in carrying out projects under this subtitle, and the effects of the grants made under this subtitle. The report may include recommendations for such legislation as the Secretary may consider to be appropriate, which may include reauthorization of this subtitle.

''SEC. 361. REGULATIONS.

''The Secretary may issue regulations to carry out this subtitle.

''SEC. 362. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There is authorized to be appropriated to carry out this subtitle—

''(1) $1,000,000,000 for fiscal year 2002;–

''(2) $1,030,000,000 for fiscal year 2003;

''(3) $1,061,000,000 for fiscal year 2004;

''(4) $1,093,000,000 for fiscal year 2005;

''(5) $1,126,000,000 for fiscal year 2006;

''(6) $1,159,000,000 for fiscal year 2007; and

''(7) $1,194,000,000 for fiscal year 2008.

''(b) AVAILABILITY.—Funds appropriated under subsection (a) for a fiscal year shall remain available until the end of the second succeeding fiscal year.''.

SEC. 2. CONFORMING AMENDMENT.

The table of contents in section 1(b) of the Workforce Investment Act of 1998 (Public Law 105–220; 112 Stat. 936) is amended, in the items relating to title III, by adding at the end the following:

''Subtitle E—Staffing for Adequate Fire and Emergency Response

''Sec. 351. Short title.
''Sec. 352. Purposes.
''Sec. 353. Definitions.
''Sec. 354. Authority to make grants.
''Sec. 355. Applications.
''Sec. 356. Use of funds.
''Sec. 357. Technical assistance.
''Sec. 358. Monitoring and evaluations.
''Sec. 359. Access to documents.
''Sec. 360. Report to Congress.
''Sec. 361. Regulations.
''Sec. 362. Authorization of appropriations.''.

Mr. WARNER. Mr. President, I am pleased to join my colleague from Connecticut, Senator DODD, in introducing legislation that will address a pressing issue for many States and localities which do not have the necessary funding to hire additional firefighters. The SAFER Act establishes a new grant program that will provide direct funding to fire and rescue departments to cover some of the costs associated with hiring and training new firefighters.

The brave women and men serving in our nation's fire service are on the front lines in America's new war on terrorism. They have a critical role in our homeland defense initiatives.

The SAFER Act would help ensure adequate staffing for fire and emergency response. Earlier this year the National Fire Protection Association, a nonprofit organization which develops and promotes scientifically based consensus codes and standards, adopted

a standard on response operational and deployment issues pertaining to fire and rescue departments. Based upon that standard, almost two thirds of fire companies across the country operate with inadequate staffing. The cost for many municipalities to meet these new safety standards, however, would be significant.

Many Americans are not aware of the staffing shortages we may face in our fire and rescue departments. The role of firefighter in our communities is far greater than most realize. They are first to respond to hazardous materials calls, chemicals emergencies, biohazard incidents, and water rescues. These are dangers which our fire rescue personnel deal with on a daily basis.

Well over 300 firefighters lost their lives in the line of duty in responding to the World Trade Center terrorist attacks. We need to recognize our firefighters and emergency personnel around the country who continue to make sacrifices in their service to the public. We must provide our fire and rescue departments with sufficient funding to hire the necessary personnel in order to ensure that our nation's communities are adequately protect.

I am honored to be an original cosponsor of the important legislation. I encourage my colleagues to support this measure and address this critical need of our fire and rescue services throughout the country.

By Mr. KENNEDY (for himself, Mr. BROWNBACK, Ms. CANTWELL, Ms. COLLINS, Mr. EDWARDS, Mr. HAGEL, Mr. REID, and Mr. ENSIGN):

S. 1618. A bill to enhance the border security of the United States, and for other purposes; to the Committee on the Judiciary.

Mr. KENNEDY. Mr. President, it is a privilege to join Senators BROWNBACK, CANTWELL, COLLINS, EDWARDS, HAGEL, REID, and ENSIGN in introducing legislation to strengthen the security of our borders and enhance our ability to deter potential terrorists. There is an urgent need to improve intelligence and technology capabilities, enhance the ability to screen individuals before they arrive at our borders, and improve the monitoring of foreign nationals already within the United States.

In strengthening the security of our borders, we must also safeguard the unobstructed entry of the more than 31 million persons who enter the U.S. legally each year as visitors, students, and temporary workers. Many of them cross the Canadian and Mexican borders to conduct daily business or visit close family members.

We must also live up to our history and heritage as a Nation of immigrants. Immigration is essential to who we are as Americans. Continued immigration is part of our national wellbeing, our identity as a Nation, and our strength in today's world. In defending the Nation, we are also defending the fundamental constitutional principles that have made America strong in the past and will make us even stronger in the future.

Our action must strike a careful balance between protecting civil liberties and providing the means for law enforcement to identify, apprehend and detain potential terrorist. It makes no sense to enact reforms that severely limit immigration into the United States. ''Fortress America,'' even if it could be achieved, is an inadequate and ineffective response to the terrorist threat.

A major goal of this legislation is to improve coordination and information-sharing by the Department of State, the Immigration and Naturalization Service, and law enforcement and intelligence agencies. It will require the Department of State and the INS to work with the Office of Homeland Security and the recently formed Foreign Terrorist Tracking Task Force to submit and implement a plan to improve their access to critical security information. It will give those responsible for screening visa applicants and persons entering the U.S. the tools they need to make informed decisions.

We must provide enforcement personnel at our ports of entry with greater resources and technology. These men and women are a primary defense in the battle against terrorism. This legislation will see that they receive adequate pay, can hire necessary support staff, and are well-trained to identify individuals who pose a security threat.

The anti-terrorism bill recently passed by the Senate addressed the need for machine-readable passports, but it did not focus on machine-readable visas, a necessary part of our efforts to improve border security. This legislation allows the Department of State to raise fees through the use of machine-readable visas and use the funds collected from those fees to improve technology at our ports of entry.

We must do more to improve our ability to screen individuals along our entire North American perimeter. This legislation directs the Department of State and the INS to work with the Office of Homeland Security and the Foreign Terrorist Tracking Task Force to strengthen our ability to screen individuals at the Perimeter before they reach our continent. We can work with Canada and Mexico to coordinate these efforts.

We must also strengthen our ability to monitor foreign nationals in the United States. In 1996, Congress enacted legislation mandating the development of an automated entry/exit control system to record the entry of every non-citizen arriving in the U.S., and to match it with the record of departure. Although technology is currently available for such a system, it has not been implemented because of the high costs involved. Our legislation builds on the anti-terrorism bill and provides greater direction to the INS for implementing the entry/exit system.

We must improve the ability of foreign service officers to detect and intercept potential terrorists before they arrive in the U.S. Most foreign nationals who travel here must apply for visas at American consulates overseas. Traditionally, consular officers have focused on interviewing applicants to determine whether they are likely to violate their visa status. Although this review is important, consular officers must also be trained specifically to screen for security threats.

We must require all airlines to electronically transmit passenger lists to destination airports in the United States, so that once the planes have landed, law enforcement authorities can intercept passengers who are on federal lookout lists. United States airlines already do this, but some foreign airlines do not. Our legislation requires all airlines to transmit passenger manifest information prior to the arrival of flight in the U.S.

In 1996, Congress established a program to collect information on non-immigrant foreign students and participants in exchange programs. Although a pilot phase of this program ended in 1999, a permanent system has not yet been implemented. Congress passed provisions in the anti-terrorism bill for the quick and effective implementation of this system by 2003, but gaps still exist. This legislation will increase the data collected by the monitoring to include the date of entry, the port of entry, the date of school enrollment, and the date the student leaves the school. It requires the Department of State and INS to monitor students who have been given visas, and to notify schools of their entry. It also requires a school to notify the INS if a student does not actually report to the school. If institutions fail to comply with these and other requirements, they should lose their ability to admit foreign students.

INS regulations provide for regular reviews of over 26,000 educational institutions that are authorized to enroll foreign students. However, inspections have been sporadic in recent years. This legislation will require INS to monitor institutions on a regular basis.

As we work to implement stronger tracking systems, we must also remember that the vast majority of foreign visitors, students, and workers who overstay their visas are not criminals or terrorists. It would be wrong and unfair, without additional information, to stigmatize them.

This legislation will also help restrict visas to foreign nationals from countries that the Department of State has determined are sponsors of terrorism. It precludes visas to individuals from countries that sponsor terrorism, unless specific steps are taken to ensure the person is not a security threat.

We must be able to retain highly skilled immigration inspectors. Our legislation will provide incentives to immigration inspectors by providing

them with the same benefits as other law enforcement personnel.

We must fully implement the use of biometric border crossing cards and allow sufficient time for individuals to obtain these cards. Many of these cards are already in use, but INS does not have the necessary equipment to read the cards. This legislation appropriates needed funds to enable the INS to purchase the machines, and it extends the deadline for individuals crossing the border to acquire the cards.

When planes land at our airports, inspectors are under significant time constraints to clear the planes and ensure the safety of all departing passengers. Our legislation removes the existing 45 minute deadline, providing inspectors with adequate time to clear and secure aircraft.

The Senate took significant steps last week to improve immigration security by passing the anti-terrorism bill, but further action is needed. This legislation will strengthen the security of our borders and enhance our ability to prevent future terrorist attacks, while also reaffirming our tradition as a Nation of immigrants. I strongly urge my colleagues to support it.

Mr. BROWNBACK. Mr. President, the terrorist attacks of September 11th have unsettled the public's confidence in our Nation's security and have raised concerns about whether our institutions are up to the task of intercepting and thwarting would-be terrorists. Given that the persons responsible for the attacks on the World Trade Center and the Pentagon came from abroad, our citizens understandably ask how these people entered the United States and what can be done to prevent their kind from doing so again. Clearly, our immigration laws and policies are instrumental to the war on terrorism. While the battle may be waged on several fronts, for the man or woman on the street, immigration is in many ways the front line of our defense.

The immigration provisions in the anti-terrorist bill passed by this body last week, the USA Patriot Act of 2001, represent an excellent first step toward improving our border security, but we must not stop there. Our Nation receives millions of visitors each year, foreign nationals who come to the United States to visit family, to do business, to tour our sites, to study and learn. Most of these people enter lawfully and mean well; they are good for our economy and are potential ambassadors of good will to their home countries. However, there is a small minority who intend us harm, and we must take intelligent measures to keep these people out.

For that reason, I am pleased to introduce today, along with my colleagues Senator KENNEDY, Senator COLLINS, Senator CANTWELL, Senator HAGEL, Senator EDWARDS, Senator ENSIGN, and Senator REID, legislation that looks specifically toward strengthening our borders and better equipping the agencies that protect them. The Enhanced Border Security Act of 2001 represents an earnest, thoughtful, and bipartisan effort to refine our immigration laws and institutions to better combat the evil that threatens our Nation.

The legislation recognizes that the war on terrorism is, in large part, a war of information. To be successful, we must improve our ability to collect, compile, and utilize information critical to our safety and national security. This bill provides that the agencies tasked with screening visa applicants and applicants for admission, namely the Department of State and the Immigration and Naturalization Service, must be provided with law enforcement and intelligence information that will enable these agencies to identify alien terrorists. By directing better coordination and access, this legislation will bring together the agencies that have the information and those that need it. With input from the Office of Homeland Security and the President's Foreign Terrorist Tracking Task Force, this bill will make prompt and effective information-sharing between these agencies a reality.

In complement to last week's anti-terrorist act, this legislation provides for necessary improvements in the technologies used by the State Department and the Service. It provides funding for the State Department to better interface with foreign intelligence information and to better staff its infrastructure. It also provides the Service with guidance on the implementation of the Integrated Entry and Exit Data System, pointing the Service to such tools as biometric identifiers in immigration documents, machine readable visas and passports, and arrival-departure and security databases. In fact, this legislation expressly enables the Service to take immediate advantage of biometric technology by authorizing the funding to purchase equipment for reading border-crossing cards that are already available for use.

To the degree that we can reasonably and realistically do so, we should attempt to intercept terrorists before they reach our borders. Accordingly, we must consider security measures not only at domestic ports of entry but also at foreign ports of departure. To that end, this legislation directs the State Department and the Service, in consultation with Office of Homeland Security, to examine, expand, and enhance screening procedures to take place outside the United States, as preinspection and preclearance. It also requires international air carriers to transmit, in advance of their arrival, passenger manifests for review by the Service. Further, it eliminates the 45-minute statutory limit on airport inspections, which many feel compromises the Service's ability to screen arriving flights properly. Finally, since we should ultimately look to expand our security perimeter to include Canada and Mexico, this bill requires these agencies to work with our neighbors to create a collaborative North American Security Perimeter.

While this legislation mandates certain technological improvements, it does not ignore the human element in the security equation. It provides special training to border patrol agents, inspectors, and foreign service officers to better identify terrorists and security threats to the United States. Moreover, to help the Service retain its most experienced people on the borders, this bill provides the Service with increased flexibility in pay, certain benefit incentives, and the ability to hire necessary support staff.

Finally, this legislation considers certain classes of aliens that raise security concerns for our country: nationals from states that sponsor terrorism and foreign students. With respect to the former, this bill expressly prohibits the State Department from issuing a nonimmigrant visa to any alien from a country that sponsors terrorism until it has been determined that the alien does not pose a threat to the safety or national security of the United States. With respect to the latter, this legislation would fill data and reporting gaps in our foreign student programs by requiring the Service to electronically monitor the student at every stage in the student visa process. It would also require the educational institution to report a foreign student's failure to enroll and the Service to monitor schools' compliance with this reporting requirement.

While we must be careful not to compromise our values or our economy, we must take intelligent, immediate steps to enhance the security of our borders. This legislation, consonant with both the USA Patriot Act and President Bush's recent directive on immigration, would implement many changes that are vital to our war on terrorism. I therefore urge my colleagues to support it.

Ms. CANTWELL. Mr. President I rise today for two purposes. First, I commend my colleague, Senator KENNEDY, for his tireless work on immigration issues and to offer my support for a bill he and Senator BROWNBACK are introducing today, the Enhanced Border Security Act of 2001. Also, I want to discuss legislation I will be introducing that builds upon the visa technology standards provisions of the USA Patriot Act of 2001 and fits within the construct of what Senators KENNEDY and BROWNBACK seek to accomplish. Several of the provisions I have proposed have already been incorporated by Senators KENNEDY and BROWNBACK, and I will continue to work with them and my other colleagues to move other provisions of my bill.

As a member of the Judiciary Committee, I have been honored to work closely with Senator KENNEDY to find ways to better protect our borders and provide necessary support to the men

and women who work for the State Department, the Immigration and Naturalization Service and the U.S. Customs Agency.

I, along with many of my colleagues, am currently pressing for funding to triple the number of Immigration and Naturalization Service and U.S. personnel on our northern border and improve border technology, the authorization for which was included in the USA Patriot Act. In the past, a severe lack of resources at our northern border has compromised the ability of border control officials to execute their duties. I am pleased that Congress made the tripling of these resources a priority for national security, and I will continue to fight for full funding of this measure. Senators KENNEDY and BROWNBACK have also addressed these needs by improving INS pay standards, providing additional training for Border Patrol and Customs agents, and increasing information technology funding.

Let me commend Senators KENNEDY and BROWNBACK on the bill they are introducing today. It reflects a thoughtful response to the current situation at our borders, and I am pleased to be an original cosponsor. I am aware that others have proposals to address border issues as well, and I look forward to working with them.

The Enhanced Border Security Act of 2001 addresses several critical issues. In hearings in recent weeks before the Immigration Subcommittee and the Technology and, Terrorism Subcommittee, we heard repeated calls for better sharing of law enforcement and intelligence information as it relates to admitting aliens into the United States. The bill addresses this problem by mandating INS and Department of State access to relevant FBI information within one year. I am pleased that the authors of this bill have included provisions to protect the privacy and security of this information, and require limitations on the use and repeated dissemination of the information.

Sharing U.S. law enforcement and intelligence information with the State Department and INS is important, but it is also critical to build upon our relationships with Canada and Mexico. We share a mutual interest in protecting our respective borders. The U.S., Canada and Mexico must also improve the sharing of information by our law enforcement and intelligence communities. We need to develop a perimeter national security program with our partners to our north and south, and the Enhanced Border Security Act does just that.

The Enhanced Border Security Act requires airlines to provide passenger manifests to the INS and Customs in advance of a flight's arrival. This will be one more source of data, that will help INS screen for those who should not be allowed to enter. It also tightens controls on student visas, and restricts the issuance of visas to aliens who are citizens of countries that sponsor terrorism. This is a thoughtful bill and I urge my colleagues' support.

Last week with the enactment of the USA Patriot Act of 2001, the Federal Government committed to developing a visa technology standard that would facilitate the sharing of information related to the admissibility of aliens into the United States. I proposed this language recognizing that for many years, the U.S. law enforcement and intelligence communities have maintained numerous, but separate, noninteroperable databases. These databases are not easily or readily accessible to front-line Federal agents responsible for making the critical decisions of whether to issue a visa or to admit an alien into the United States.

To build on and fulfill the goals of establishing this standard, my bill will do three things. First, it will require technology be implemented to track the initial entry and exit of aliens traveling on a U.S. visa. We know now that several of the terrorists who attacked America on September 11 were traveling on expired visas. We have had the law in place for several years now, but due to concerns about maintaining the flow of trade and tourism across our borders, concerns I share, the provisions of Section 110 have not been fully implemented. Technology will address those concerns, allowing electronic recordation and verification of entry and exit data in an instant.

Second, I believe it is necessary to require the Departments of State and Justice to work with the Office of Homeland Security to build a cohesive electronic data sharing system. The system must incorporate interoperability and compatibility within and between the databases of the various agencies that maintain information relevant to determining whether a visa should be issued or whether an alien should be admitted into the United States. My legislation will require interoperable real-time sharing of law enforcement and intelligence information relevant to the issuance of a visa or an alien's admissibility to the U.S. The provision will require that information is made available, although with the appropriate safeguards for privacy and the protection of intelligence sources, to the front line government agents making the decisions to issue visas or to admit visa holding aliens to the United States. I am pleased that Senators KENNEDY and BROWNBACK have adopted these provisions into their legislation.

Finally, building on the provisions of the Kennedy-Brownback bill for a Perimeter National Security Program, and on the technology standard required under the USA Patriot Act, my legislation will require the Department of State and the Attorney General to study and report to Congress within 90 days on how best to facilitate sharing of information that may be relevant to determining whether to issue a U.S. visa. Our borders are only as secure as the borders of those countries with whom we have agreements that visas are not required. We need to build on our relationships with these international partners to secure our respective borders through better information sharing.

Keeping terrorists out of the U.S. in the first place will reduce the risks of terrorism within the U.S. in the future. Aliens known to be affiliated with terrorists have been admitted to the U.S. on valid visas simply because one agency in government did not share important information with another department in a timely fashion. We must make sure that this does not happen again.

Until now, we had hoped that agencies would voluntarily share this information on a real-time and regular basis. This has not happened, and although I know that the events of September 11 have led to serious rethinking of our information-sharing processes and procedures, I think it is time to mandate the sharing of fundamental information.

Advancements in technology have provided us with additional tools to verify the identify of individuals entering our country without impairing the flow of legitimate trade, tourism, workers and students. It is time we put these tools to use.

Improving our national security is vitally important, but I will not support measures that compromise America's civil liberties. Both the bill being introduced today and the bill I will be introducing include several safeguards to protect individuals' rights to privacy. The bills provide that where databases are created or shared, there must be protection of privacy and adequate security measures in place, limitations on the use and re-dissemination of information, and mechanisms for removing obsolete or erroneous information. Even in times of urgent action, we must protect the freedoms that make our country great.

By Mr. SANTORUM (for himself, Mr. ROCKEFELLER, Mrs. LINCOLN, and Mr. MCCONNELL):

S. 1619. A bill to amend title XVIII of the Social Security Act to provide for coverage of substitute adult day care services under the Medicare Program; to the Committee on Finance.

Mr. SANTORUM. Mr. President, I rise to join my colleagues Mr. ROCKEFELLER, Mrs. LINCOLN, and Mr. MCCONNELL to introduce bipartisan legislation aimed at improving long-term care health and rehabilitation options for Medicare beneficiaries, and also assisting family caregivers.

We all recognize that our Nation needs to address sooner rather than later challenges of financing long-term care services for our growing aging population. The Congressional Budget Office has projected that national expenditures for long-term care services for the elderly will increase each year through 2040. But it is in just over a decade when we will see these challenges become even more pronounced

when the 76 million baby boomers begin to turn 65. Baby boomers are expected to live longer and greater numbers will reach 85 and older.

Given the expected growing costs of long-term care services, and combined with the fact that today so many American families are already serving as caregivers for aging or ailing seniors and providing such a large portion of long-term care services, it is more important than ever that we have in place quality options in how to best care for our senior population about to dramatically increase.

This is why we are introducing the Medicare Adult Day Services Alternative Act, legislation to offer home health beneficiaries more options for receiving care in a setting of their own choosing, rather than confining the provision of those benefits solely to the home.

This legislation would give beneficiaries the option to receive some or all of their Medicare home health services in an adult day setting. This would be a substitution, not an expansion, of services. The bill would not make new people eligible for Medicare home health benefits or expand the list of services paid for. In fact, this legislation may be designed to produce net savings for the Medicare program.

Permitting homebound patients to receive their home health care in a clinically-based senior day center, as an alternative to receiving it at home, could result in significant benefits to the Medicare program, such as reduced cost-per-episode, reduced numbers of episodes, as well as mental and physical stimulation for patients.

Moreover, the Medicare Adult Day Services Alternative Act could well have a positive impact on our economy, as it would enable caregivers to attend to other things in today's fast-paced family life, such as working a full- or part-time job and caring for children, knowing their loved ones are well cared for. It is unfortunate that today many caregivers have to choose between working or caring for a family member. It is estimated that the average loss of income to these caregivers is more than $600,000 in wages, pension, and Social Security benefits. And by extension, the loss in productivity in United States businesses is pegged at more than $10 billion annually.

But it does not have to be an either-or proposition. The Medicare Adult Day Services Alternative Act is a creative solution to health care delivery, which would adequately reimburse providers in a fiscally responsible way. Located in every state in the United States and the District of Columbia, adult day centers generally offer transportation, meals, personal care, and counseling in addition to the medical services and socialization benefits offered.

We can and should offer both our Medicare beneficiaries and family caregivers more and better options for health care delivery, and that is exactly what the Medicare Adult Day Services Alternative Act is designed to do. This legislation is bipartisan, and is supported by more than 20 national non-profit organizations concerned with the well-being of America's older population and committed to representing their interests.

I hope our colleagues will join us in this cause. I again thank Senators ROCKEFELLER, LINCOLN and MCCONNELL for working with me in this effort, and ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1619

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Adult Day Services Alternative Act of 2001''.

SEC. 2. FINDINGS.

Congress finds that—

(1) adult day care offers services, including medical care, rehabilitation therapies, dignified assistance with activities of daily living, social interaction, and stimulating activities, to seniors who are frail, physically challenged, or cognitively impaired;

(2) access to adult day care services provides seniors and their familial caregivers support that is critical to keeping the senior in the family home;

(3) more than 22,000,000 families in the United States serve as caregivers for aging or ailing seniors, nearly 1 in 4 American families, providing close to 80 percent of the care to individuals requiring long-term care;

(4) nearly 75 percent of those actively providing such care are women who also maintain other responsibilities, such as working outside of the home and raising young children;

(5) the average loss of income to these caregivers has been shown to be $659,130 in wages, pension, and Social Security benefits;

(6) the loss in productivity in United States businesses ranges from $11,000,000,000 to $29,000,000,000 annually;

(7) the services offered in adult day care facilities provide continuity of care and an important sense of community for both the senior and the caregiver;

(8) there are adult day care centers in every State in the United States and the District of Columbia;

(9) these centers generally offer transportation, meals, personal care, and counseling in addition to the medical services and socialization benefits offered; and

(10) with the need for quality options in how to best care for our senior population about to dramatically increase with the aging of the baby boomer generation, the time to address these issues is now.

SEC. 3. COVERAGE OF SUBSTITUTE ADULT DAY CARE SERVICES UNDER MEDICARE.

(a) SUBSTITUTE ADULT DAY CARE SERVICES BENEFIT.—

(1) IN GENERAL.—Section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)) is amended—

(A) in the matter preceding paragraph (1), by inserting ''or (8)'' after ''paragraph (7)'';

(B) in paragraph (6), by striking ''and'' at the end;

(C) in paragraph (7), by adding ''and'' at the end; and

(D) by inserting after paragraph (7), the following new paragraph:

''(8) substitute adult day care services (as defined in subsection (ww));''.

(2) SUBSTITUTE ADULT DAY CARE SERVICES DEFINED.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Substitute Adult Day Care Services; Adult Day Care Facility

''(ww)(1)(A) The term 'substitute adult day care services' means the items and services described in subparagraph (B) that are furnished to an individual by an adult day care facility as a part of a plan under subsection (m) that substitutes such services for a portion of the items and services described in subparagraph (B)(i) furnished by a home health agency under the plan, as determined by the physician establishing the plan.

''(B) The items and services described in this subparagraph are the following items and services:

''(i) Items and services described in paragraphs (1) through (7) of subsection (m).

''(ii) Meals.

''(iii) A program of supervised activities designed to promote physical and mental health and furnished to the individual by the adult day care facility in a group setting for a period of not fewer than 4 and not greater than 12 hours per day.

''(iv) A medication management program (as defined in subparagraph (C)).

''(C) For purposes of subparagraph (B)(iv), the term 'medication management program' means a program of services, including medicine screening and patient and health care provider education programs, that provides services to minimize—

''(i) unnecessary or inappropriate use of prescription drugs; and

''(ii) adverse events due to unintended prescription drug-to-drug interactions.

''(2)(A) Except as provided in subparagraphs (B) and (C), the term 'adult day care facility' means a public agency or private organization, or a subdivision of such an agency or organization, that—

''(i) is engaged in providing skilled nursing services and other therapeutic services directly or under arrangement with a home health agency;

''(ii) meets such standards established by the Secretary to ensure quality of care and such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the facility;

''(iii) provides the items and services described in paragraph (1)(B); and

''(iv) meets the requirements of paragraphs (2) through (8) of subsection (o).

''(B) Notwithstanding subparagraph (A), the term 'adult day care facility' shall include a home health agency in which the items and services described in clauses (ii) through (iv) of paragraph (1)(B) are provided—

''(i) by an adult day-care program that is licensed or certified by a State, or accredited, to furnish such items and services in the State; and

''(ii) under arrangements with that program made by such agency.

''(C) The Secretary may waive the requirement of a surety bond under paragraph (7) of subsection (o) in the case of an agency or organization that provides a comparable surety bond under State law.

''(D) For purposes of payment for home health services consisting of substitute adult day care services furnished under this title, any reference to a home health agency is deemed to be a reference to an adult day care facility.''.

(b) PAYMENT FOR SUBSTITUTE ADULT DAY CARE SERVICES.—Section 1895 of the Social Security Act (42 U.S.C. 1395fff) is amended by adding at the end the following new subsection:

''(f) PAYMENT RATE FOR SUBSTITUTE ADULT DAY CARE SERVICES.—In the case of home health services consisting of substitute adult day care services (as defined in section 1861(ww)), the following rules apply:

''(1) The Secretary shall estimate the amount that would otherwise be payable under this section for all home health services under that plan of care other than substitute adult day care services for a period specified by the Secretary.

''(2) The total amount payable for home health services consisting of substitute adult day care services under such plan may not exceed 95 percent of the amount estimated to be payable under paragraph (1) furnished under the plan by a home health agency.''.

(c) ADJUSTMENT IN CASE OF OVERUTILIZATION OF SUBSTITUTE ADULT DAY CARE SERVICES.—

(1) MONITORING EXPENDITURES.—Beginning with fiscal year 2003, the Secretary of Health and Human Services shall monitor the expenditures made under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for home health services (as defined in section 1861(m) of such Act (42 U.S.C. 1395x(m))) for the fiscal year, including substitute adult day care services under paragraph (8) of such section (as added by subsection (a)), and shall compare such expenditures to expenditures that the Secretary estimates would have been made for home health services for that fiscal year if subsection (a) had not been enacted.

(2) REQUIRED REDUCTION IN PAYMENT RATE.—If the Secretary determines, after making the comparison under paragraph (1) and making such adjustments for changes in demographics and age of the medicare beneficiary population as the Secretary determines appropriate, that expenditures for home health services under the medicare program, including such substitute adult day care services, exceed expenditures that would have been made under such program for home health services for a year if subsection (a) had not been enacted, then the Secretary shall adjust the rate of payment to adult day care facilities so that total expenditures for home health services under such program in a fiscal year does not exceed the Secretary's estimate of such expenditures if subsection (a) had not been enacted.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 2002.

Mr. ROCKEFELLER. Mr. President, I am delighted to join my good friend from Pennsylvania as an original cosponsor of the ''Medicare Adult Day Services Alternative Act.''

Adult day health care is a vital component of good long-term care, for patients and for their caregivers. I am hopeful that as a result of this bill, adult day health care will play an increasingly larger role in how we care for the elderly in this country.

To be clear, this bill would simply give beneficiaries of the Medicare home health benefit the option of choosing to receive their care partially in an adult day care setting. This bill would not expand the list of who is eligible for home care, it simply changes the location where services may be provided. The benefits of this legislation, are that beneficiaries gain increased social interaction with peers, while simultaneously giving caregivers a measure of respite.

I am a strong supporter of adult day health care, because I've seen the tremendous benefits of it in the VA health care system. The federally funded VA health care system, because of the very substantial World War II veteran population, has developed some of the most innovative ways to care for older people especially in non-institutional settings. As a result of this demand, VA has led the Nation in developing adult day health care programs. The Adult Day Health Care Program at VA was established in the late 1970s at five facilities. At this time, there are 15 in-house VA Adult Day Health Care programs. All other VA medical centers provide this program to veterans through a contractual basis with community-based programs.

In 1999, I introduced legislation to further expand on VA adult day by making adult day health care, and other non-institutional long-term care services, part of the standard benefits package in the VA. I am thrilled that my legislation was passed later that year and that all veterans who enroll for VA care will have access to these services.

I look forward to working with members of the Senate Finance Committee to advance the cause of long-term care. It is my view that providing long-term care to all Americans is a priority. Let us delay no longer.

By Mr. ALLARD:

S. 1620. A bill to authorize the Government National Mortgage Association to guarantee conventional mortgage-backed securities, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. ALLARD. Mr. President, today I am pleased to introduce the Home Ownership Expansion Act of 2001. This legislation is designed to expand home ownership by increasing the supply of affordable mortgages available for home buyers. The legislation establishes a private-public partnership between mortgage providers and insurers and the Government National Mortgage Association, GNMA or Ginnie Mae.

GNMA is a part of the Department of Housing and Urban Development, and its current business is limited to home loans that are insured only by government agencies. GNMA provides a guarantee to investors who purchase FHA and VA home loans that are bundled into securities. These securities are backed by the full faith and credit of the U.S. government.

The Home Ownership Expansion Act of 2001 would authorize a new program that permits GNMA to guarantee securities that consist of mortgages insured by private mortgage insurance. Private insurance results in reduced risk to taxpayers which will in turn make more capital available for home mortgages.

This new GNMA program would be targeted at first-time and middle income home buyers. The program would be limited to mortgages up to $275,000 and tailored to borrowers who have less than 20 percent down payments to put into homes. GNMA would benefit from the ability to compete for privately insured mortgage business. GNMA's income would increase through the program and GNMA would be strengthened by its ability to offer a greater variety of products to investors.

By permitting GNMA to enter the secondary market for privately insured mortgages, the legislation would increase competition. Mortgage lenders would have a new entity to which they could sell their mortgages, and the number and variety of loan-approval systems at use in the low down payment mortgage market would increase. The beneficiaries of this increase in competition would be consumers who wish to purchase a home.

Mr. President, the current rate of home ownership in the United States is 67 percent of households. This rate has risen steadily in recent decades and is great achievement for our nation. However, the rate of home ownership among minority families, entry level workers, and younger Americans remains much lower. This legislation is designed to further increase the home ownership rate by increasing the availability of affordable mortgages.

The Home Ownership Expansion Act of 2001 would strengthen the Government National Mortgage Association. It would protect taxpayers by increasing private sector risk sharing on GNMA products. It would increase competition in the secondary mortgage market, helping to lower costs to consumers. And by increasing the use of varying underwriting systems it would help to qualify more first-time, middle income and minority home buyers. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD as follows:

S. 1620

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Home Ownership Expansion Act of 2001''.

SEC. 2. GNMA GUARANTEE OF SECURITIES BACKED BY CONVENTIONAL MORTGAGES.

(a) FINDINGS.—Congress finds that—

(1) expanding home ownership is a national goal, and that increasing the principal secondary market outlets for conventional home mortgages will serve that goal by improving the liquidity of investments in those mortgages; and

(2) risk-sharing between the public sector and the private mortgage insurance industry will provide consumers with greater access to mortgage credit opportunities.

(b) AUTHORITY TO GUARANTEE CONVENTIONAL MORTGAGE-BACKED SECURITIES.—Section 306 of the National Housing Act (12 U.S.C. 1721) is amended by adding at the end the following:

''(h) GNMA GUARANTEE OF SECURITIES BACKED BY CONVENTIONAL MORTGAGES.—

''(1) IN GENERAL.—The Association may guarantee the timely payment of principal and interest on conventional mortgage-backed securities that are backed by qualifying privately insured mortgages that are

insured with primary mortgage insurance, extended mortgage insurance, and supplemental mortgage insurance.

''(2) PREMIUMS.—The issuer of securities guaranteed by the Association under this subsection that are backed by qualifying privately insured mortgages shall—

''(A) for primary mortgage insurance, collect from the mortgagor, and remit to the qualified mortgage insurer, the premium or premiums as may be established by the qualified mortgage insurer in accordance with applicable Federal or State law; and

''(B) for extended mortgage insurance and supplemental mortgage insurance, pay and remit the premium or premiums to the qualified mortgage insurer from the sums attributable to the difference between the interest rates applicable to the mortgages in the particular pool and the interest rate set forth on the trust certificate or security guaranteed by the Association based on and backed by such mortgages, and without additional premium charge therefore to the mortgagor.

''(3) DISPOSITION OF PROPERTY UPON DEFAULT.—Upon default by a mortgagor of a mortgage guaranteed under this subsection, the property covered by the mortgage shall be disposed of by the issuer of the securities guaranteed under this subsection or the qualified mortgage insurer in accordance with the customary policies and procedures of that issuer and insurer.

''(4) AUTHORITY.—As part of the authority provided to the Association to issue guarantees under this subsection for fiscal year 2002, the Association may, during fiscal year 2002, issue guarantees of the timely payment of principal and interest on trust certificates or other securities based on and backed by qualifying privately insured mortgages in an aggregate amount equal to not more than $50,000,000,000.

''(5) REGULATORY POWER OF THE SECRETARY.—The Secretary shall—

''(A) have authority to review and approve premiums and other terms and conditions established for the primary mortgage insurance covering the mortgages contained in the trusts or pools guaranteed by the Association under this subsection, and shall have the authority to approve participation in the program based on safety and soundness;

''(B) prescribe such rules and regulations as shall be necessary and proper to ensure that the purposes of the Home Ownership Expansion Act of 2001 are accomplished.

''(i) DEFINITIONS.—As used in this section:

''(1) CONVENTIONAL MORTGAGE LIMIT.—The term 'conventional mortgage limit' means the greater of the applicable maximum original principal obligation of conventional mortgages established by—

''(A) the Federal National Mortgage Association, pursuant to section 302(b)(2); or

''(B) the Federal Home Loan Mortgage Corporation, pursuant to section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)).

''(2) COVERAGE PERCENTAGE.—The term 'coverage percentage' means the percentage of the total of the outstanding principal balance on a mortgage, and accrued interest, advances, and reasonable expenses related to property preservation and foreclosure, that is subject to payment in the event of a claim under a policy of primary mortgage insurance on a qualifying privately insured mortgage.

''(3) EXTENDED MORTGAGE INSURANCE.—The term 'extended mortgage insurance' means insurance that—

''(A) is issued by a qualified mortgage insurer;

''(B) guarantees and insures against losses on the mortgage;

''(C) has the same coverage percentage and other substantially similar terms and conditions as the primary mortgage insurance for the mortgage;

''(D) becomes effective upon mandatory cancellation or termination of the primary mortgage insurance, and remains in effect until the mortgage is paid in full; and

''(E) is not subject to mandatory cancellation or termination.

''(4) MANDATORY CANCELLATION OR TERMINATION.—The term 'mandatory cancellation or termination' means cancellation or termination of mortgage insurance, as provided in section 3 of the Homeowners Protection Act of 1998 (12 U.S.C. 4902) or by a protected State law, as defined in section 9 of that Act.

''(5) PRIMARY MORTGAGE INSURANCE.—The term 'primary mortgage insurance' means insurance that—

''(A) is issued by a qualified mortgage insurer;

''(B) guarantees and insures against losses on the mortgage, under standard terms and conditions generally offered in the private mortgage guaranty insurance industry;

''(C) has a coverage percentage equal to—

''(i) not less than 12 percent, if the principal-to-value ratio is greater than 80 percent and not greater than 85 percent;

''(ii) not less than 25 percent, if the principal-to-value ratio is greater than 85 percent and not greater than 90 percent;

''(iii) not less than 30 percent, if the principal-to-value ratio is greater than 90 percent and not greater than 95 percent; and

''(iv) not less than 35 percent, if the principal-to-value ratio is greater than 95 percent; and

''(D) may be canceled or terminated by the mortgagor, issuer, or qualified mortgage insurer only pursuant to mandatory cancellation or termination.

''(6) PRINCIPAL-TO-VALUE RATIO.—The term 'principal-to-value ratio' means the ratio of the original outstanding principal balance of a first mortgage to the value of the property securing the mortgage, as established at the time of origination by appraisal or other reliable indicia of property, conducted or performed not earlier than 6 months before the date of origination, and not later than that date of origination.

''(7) QUALIFIED MORTGAGE INSURER.—The term 'qualified mortgage insurer' means a provider of private mortgage insurance, as defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), that—

''(A) is authorized and licensed by a State or an instrumentality of a State to transact private mortgage insurance business in the State in which the provider is transacting that business, excluding any entity that is exempt from State licensing requirements;

''(B) is rated in 1 of the 2 highest rating categories by not less than 1 nationally recognized statistical rating organization; and

''(C) meets such additional qualifications as may be determined by the Association.

''(8) QUALIFYING PRIVATELY INSURED MORTGAGE.—The term 'qualifying privately insured mortgage' means a first mortgage—

''(A) that is not—

''(i) insured under title II of this Act, except as specifically provided in this section;

''(ii) insured under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.);

''(iii) insured or guaranteed under chapter 37 of title 38, United States Code; or

''(iv) made or guaranteed under part B of title V of the Public Health Service Act (42 U.S.C. 290bb et seq.);

''(B) that—

''(i) is secured by property comprising 1-to-4 family dwelling units;

''(ii) has a term of not longer than 30 years;

''(iii) has a principal-to-value ratio of more than 80 percent; and

''(iv) has an original principal obligation that does not exceed the conventional mortgage limit;

''(C) not more than 1 payment of which has been delinquent by more than 30 days, and no payment of which has been delinquent by more than 60 days, during the 12-month period immediately preceding the time of guarantee; and

''(D) that is covered by primary mortgage insurance, extended mortgage insurance, and supplemental mortgage insurance.

''(9) SUPPLEMENTAL MORTGAGE INSURANCE.—The term 'supplemental mortgage insurance' means insurance that—

''(A) is issued by a qualified mortgage insurer;

''(B) guarantees and insures against losses on the mortgage under such terms and conditions as are reasonably acceptable to the Association;

''(C) becomes effective on the date on which the guaranty becomes effective; and

''(D) terminates as if subject to automatic termination under section 3(b) of the Homeowners Protection Act of 1998 (12 U.S.C. 4902(b)), subject to the conditions stated in that section, or when the mortgage is paid in full, whichever occurs first.

''(10) TRUST OR POOL.—A trust or pool referred to in this section means a trust or pool composed only of—

''(A) qualifying privately insured mortgages; or

''(B) mortgages insured under title II.''.

(c) GUARANTY FEE.—Section 306(g)(3)(A) of the National Housing Act (12 U.S.C. 1721(g)(3)(A)) is amended—

(1) by inserting ''(i)'' after ''(A)''; and

(2) by adding at the end the following:

''(ii) The Association shall assess and collect a fee in an amount equal to not more than 8 basis points, as determined by the Secretary, in order to generate revenues to the Federal Government in excess of the cost to the Federal Government, as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a), of the guaranty of the timely payment of principal and interest on trust certificates or other securities based on or backed by qualifying privately insured mortgages under subsection (h).''.

(d) VOLUNTARY PROGRAM PARTICIPATION; NO FEDERAL CONTRACTOR STATUS.—Section 306(g) of the National Housing Act (12 U.S.C. 1721(g)) is amended by adding at the end the following:

''(4) Nothing in this subsection shall be construed to require any issuer to issue any trust certificate or security that is based on and backed by a trust or pool composed of qualifying privately insured mortgages.

''(5) Notwithstanding any other provision of law, a qualified mortgage insurer that participates in the guarantee program under subsection (h) shall not be considered, by virtue of such participation, as entering into a contract with any Federal department or agency, or participating in any program or activity receiving Federal financial assistance, or participating in any program or activity conducted by any Federal department or agency. Nothing in this paragraph is intended to deny or otherwise affect the rights of the Association as the assignee, holder, or beneficiary of a mortgage insurance contract.''.

(e) REINSURER RATINGS REQUIREMENTS.—Section 306(g) of the National Housing Act (12 U.S.C. 1721(g)), as amended by this Act, is amended by adding at the end the following:

''(6) A qualified mortgage insurer may not reinsure any portion of its obligations under subsection (h) with any reinsurance that—

''(A) is not rated in 1 of the 2 highest rating categories by not less than 1 nationally recognized statistical rating organization; or

''(B) fails to meet such other requirements as the Secretary may deem appropriate.''.

SEC. 3. CONFORMING AMENDMENTS.

(a) GUARANTEES.—Section 306(g)(1) of the National Housing Act (12 U.S.C. 1721(g)(1)) is amended—

(1) by inserting ''or subsection (h)'' after the term ''this subsection'' each place it appears;

(2) by inserting ''(A)'' after ''(1)'';

(3) by striking ''The Association shall collect'' and inserting the following:

''(B) The Association shall collect'';

(4) by striking ''In the event'' and inserting the following:

''(C) In the event'';

(5) by striking ''In any case'' and inserting the following:

''(D) In any case'';

(6) in subparagraph (D), as so designated by paragraph (4) of this subsection—

(A) by striking ''(I)'' and inserting ''(i)'';

(B) by striking ''(II)'' and inserting ''(ii)''; and

(C) by striking ''(III)'' and inserting ''(iii)'';

(7) by striking ''The Association is hereby empowered,'' and all that follows through ''against which the guaranteed securities are issued.'' and inserting the following:

''(E)(i) The Association may, in connection with any guaranty under this subsection or subsection (h), whether before or after any default by the issuer or any default by the qualified mortgage insurer (in the case of securities based on and backed by qualifying privately insured mortgages)—

''(I) provide by contract with the issuer for the extinguishment, upon default by the issuer, of any redemption, equitable, legal, or other right, title, or interest of the issuer in any mortgage or mortgages constituting the trust or pool against which the guaranteed securities are issued; or

''(II) provide by contract with the qualified mortgage insurer for the extinguishment, upon default by the qualified mortgage insurer, of any redemption, equitable, legal, or other right, title, or interest of the qualified mortgage insurer in such mortgage or mortgages, as well as any related primary mortgage insurance, extended mortgage insurance, or supplemental mortgage insurance coverage or any future premiums and proceeds related thereto.

''(ii) With respect to any issue of guaranteed securities—

''(I) in the event of default by the issuer, and pursuant otherwise to the terms of the contract, the mortgages that constitute the trust or pool referred to in clause (i) shall become the absolute property of the Association, subject only to the unsatisfied rights of the holders of the securities based on and backed by that trust or pool; and

''(II) in the event of default by the qualified mortgage insurer, and pursuant otherwise to the terms of the contract, any right of the qualified mortgage insurer with respect to the mortgages that constitute such trust or pool and any related primary mortgage insurance, extended mortgage insurance, or supplemental mortgage insurance coverage and any future premiums and proceeds related thereto shall become the absolute property of the Association, subject only to the unsatisfied rights of the holders of the securities based on and backed by such trust or pool and to the unsatisfied rights of any insured issuer with respect to any mortgage insurance coverage.

''(F) No State, local, or Federal law (other than a Federal statute enacted expressly in limitation of this subsection after the date of enactment of the Home Ownership Expansion Act of 2001), shall preclude or limit the exercise by the Association of—

''(i) its power to contract with the issuer, or the qualified mortgage insurer on the terms stated in subparagraph (E);

''(ii) its rights to enforce any such contract with the issuer or the qualified mortgage insurer; or

''(iii) its ownership rights, as provided in subparagraph (E), with respect to the mortgages constituting the trust or pool against which the guaranteed securities are issued, and with respect to any related primary mortgage insurance, extended mortgage insurance, or supplemental mortgage insurance coverage and any future premiums and proceeds related thereto.'';

(8) by striking ''The full faith'' and inserting the following:

''(G) The full faith''; and

(9) by striking ''There shall be'' and inserting the following:

''(H) There shall be''.

(b) SEPARATE ACCOUNTABILITY.—Section 307 of the National Housing Act (12 U.S.C. 1722) is amended—

(1) by striking ''All'' and inserting ''(a) IN GENERAL.—All''; and

(2) by adding at the end the following:

''(b) LIMITATION.—Notwithstanding subsection (a), with respect to qualifying privately insured mortgages (as defined in section 306(i)), related earnings described in subsection (a) of this section or other amounts as become available after such allowances and as are attributable to the fees and charges assessed or collected in connection with the guaranty of trust certificates or securities based on or backed by such qualifying privately insured mortgages shall inure to the benefit of and may be retained by the Secretary in support of programs under titles II and III of this Act.''.

SEC. 4. IMPLEMENTATION AND REPORT.

(a) IN GENERAL.—The Government National Mortgage Association shall provide for the initial implementation of this Act and the amendments made by this Act by—

(1) giving notice to its participating issuers; and

(2) submitting a report to the Chairpersons and Ranking Members of the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, that confirms that the authority of the Secretary of Housing and Urban Development under section 306(h)(5) of the National Housing Act, as added by this Act, does not adversely impact the safety and soundness of the Government National Mortgage Association.

(b) PUBLICATION.—The notice required by subsection (a) shall be published not later than 120 days after the date of enactment of this Act.

(c) REPORT.—The report submitted in accordance with subsection (a) shall include an economic analysis of the adequacy of the guarantee fee provided for in section 306(g)(3)(A)(ii) of the National Housing Act, as added by this Act.

By Mr. BINGAMAN (for himself, Mr. JEFFORDS, Mr. LEAHY, and Mrs. MURRAY):

S. 1625. A bill to require the Secretary of Health and Human Services to approve up to 4 State waivers to allow a State to use its allotment under the State children's health insurance program under title XXI of the Social Security Act to increase the enrollment of children eligible for medical assistance under the Medicaid Program under title XIX of such Act; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, the legislation I am introducing today with Senators JEFFORDS, LEAHY, and MURRAY entitled the ''Children's Health Equity Act of 2001'' addresses an inequity that was created during the establishment of the State Children's Health Insurance Program, CHIP, that unfairly penalized certain States that had done the right thing and had expanded Medicaid coverage to children prior to the enactment of the bill.

While the Congress recognized this fact for some States and ''grandfathered'' in their expansions so those States could use the new CHIP funding for the children of their respective states, the legislation failed to do so for others, including New Mexico. This had the effect of penalizing a certain group of states for having done the right thing.

As a result, the ''Children's Health Equity Act of 2001'' addresses this inequity by allowing four States, including New Mexico, Vermont, Washington, and Rhode Island, to be allowed to also utilize their CHIP allotments for coverage of children covered by Medicaid above their 1996 levels, putting them on a more level field with all other States in the country.

Mr. President, as you know, in 1997 Congress and President Clinton agreed to establish the State Children's Health Insurance Program, CHIP, and provide $48 billion over 10 years as an incentive to States to provide health care coverage to uninsured, low-income children up 200 percent of poverty or beyond.

During the negotiations of the Balanced Budget Act, BBA, of 1997, Congress and the Administration properly recognized that certain states were already undertaking Medicaid or separate state-run expansions of coverage to children up to 185 percent of poverty or above and that they would be allowed to use the new CHIP funding for those purposes. The final bill specifically allowed the States of Florida, New York, and Pennsylvania to convert their separate state-run programs into CHIP expansions and States that had expanded coverage to children through Medicaid after March 31, 1997, were also allowed to use CHIP funding for their expansions.

Unfortunately, New Mexico and other States that had enacted similar expansions prior to March 1997 were denied the use of CHIP funding for their expansions. This created an inequity among the states where some were allowed to have their prior programs ''grandfathered'' into CHIP and others were denied. Again, our bill addresses this inequity.

New Mexico has a strong record of attempting to expand coverage to children through the Medicaid program. In 1995, prior to the enactment of CHIP, New Mexico expanded coverage to for all children through age 18 through the Medicaid program up to 185 percent of poverty. After CHIP was passed, New Mexico further expanded its coverage up to 235 percent of poverty, above the level of the vast majority of states across the country.

Due to the inequity caused by CHIP, New Mexico has been allocated $182 million from CHIP between fiscal years 1998 and 2000, and yet, has only been able to spend slightly over $5 million as of the end of last fiscal year. In other words, New Mexico has been allowed to spend only 3 percent of its Federal CHIP allocations.

New Mexico is unable to spend its funding because it had enacted its expansion of coverage to children up to 185 percent of poverty prior to the enactment of CHIP and our State was not ''grandfathered'' into CHIP as other comparable States were.

The consequences for the children of New Mexico are enormous. According to the Census Bureau, New Mexico has an estimated 129,000 uninsured children. In other words, almost 22 percent of all the children in New Mexico are uninsured, despite the fact the State has expanded coverage up to 235 percent of poverty. This is the fourth highest rate of uninsured children in the country.

This is a result of the fact that an estimated 103,000 of the 129,000 uninsured children in New Mexico are below 200 percent of poverty. These children are, consequently, eligible for Medicaid but currently unenrolled. With the exception of those few children between 185 and 200 percent of poverty who are eligible for CHIP funding, all of the remaining uninsured children below 185 percent of poverty in New Mexico are denied CHIP funding despite their need.

Exacerbating this inequity is the fact that many states are accessing their CHIP allotments to cover kids at poverty levels far below New Mexico's current or past eligibility levels. The children in those states are certainly no more worthy of health insurance coverage than the children of New Mexico.

As the most recent policy statement by the National Governors' Association reads, ''The Governors believe that it is critical that innovative States not be penalized for having expanded coverage to children before the enactment of S-CHIP, which provides enhanced funding to meet these goals. To this end, the Governors support providing additional funding flexibility to states that had already significantly expanded coverage to the majority of uninsured children in their States.''

Consequently, the bill I am introducing today corrects this inequity. The bill reflects a carefully-crated response to the unintended consequences of CHIP and brings much needed assistance to children currently uninsured in my State and other similarly situated States, including Washington, Vermont, and Rhode Island.

Rather than simply changing the effective date included in the BBA that helped a smaller subset of States, this initiative includes strong maintenance of effort language as well as incentives for our State to conduct outreach and enrollment efforts and program simplification to find and enroll uninsured kids because we feel strongly that they receive the health coverage for which they are eligible.

The bill does not take money from other States' CHIP allotments. It simply allows our States to spend our States' specific CHIP allotments from the Federal Government on our uninsured children, just as other States across the country are doing.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1625

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Children's Health Equity Act of 2001''.

SEC. 2. APPROVAL OF UP TO 4 STATE WAIVERS TO ALLOW TITLE XXI ALLOTMENTS TO BE USED FOR INCREASING THE ENROLLMENT OF MEDICAID CHILDREN.

(a) DEFINITIONS.—In this section:

(1) CHILD.—With respect to a State, the term ''child'' has the meaning given such term for purposes of the State medicaid program under title XIX of the Social Security Act.

(2) CHILD HEALTH ASSISTANCE.—The term ''child health assistance'' has the meaning given that term in section 2110(a) of the Social Security Act (42 U.S.C. 1397jj(a)).

(3) ENHANCED FMAP.—The term ''enhanced FMAP'' has the meaning given that term in section 2105(b) of such Act (42 U.S.C. 1397ee(b)).

(4) FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—The term ''Federal medical assistance percentage'' has the meaning given that term in section 1905(b) of such Act (42 U.S.C. 1396d(b)).

(5) POVERTY LINE.—The term ''poverty line'' has the meaning given that term in section 2110(c)(5) of such Act (42 U.S.C. 1397jj(c)(5)).

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(7) STATE CHILD HEALTH PLAN.—The term ''State child health plan'' has the meaning given that term under section 2110(c)(7) of such Act (42 U.S.C. 1397jj(c)(7)).

(b) APPROVAL OF CERTAIN WAIVERS.—The Secretary shall approve not more than 4 waiver applications under which the Secretary shall pay to a State that the Secretary determines satisfies the requirements described in subsection (c) the payment authorized under subsection (d).

(c) REQUIREMENTS.—The requirements described in this subsection are the following:

(1) SCHIP INCOME ELIGIBILITY.—The State has a State child health plan that (whether implemented under title XIX or XXI of the Social Security Act)—

(A) has the highest income eligibility standard permitted under title XXI of such Act as of January 1, 2001;

(B) subject to paragraph (2), does not limit the acceptance of applications for children; and

(C) provides benefits to all children in the State who apply for and meet eligibility standards on a statewide basis.

(2) NO WAITING LIST IMPOSED.—With respect to children whose family income is at or below 200 percent of the poverty line, the State does not impose any numerical limitation, waiting list, or similar limitation on the eligibility of such children for child health assistance under such State plan.

(3) ADDITIONAL REQUIREMENTS.—The State has implemented at least 4 of the following policies and procedures (relating to coverage of children under titles XIX and title XXI of the Social Security Act):

(A) UNIFORM, SIMPLIFIED APPLICATION FORM.—With respect to children who are eligible for medical assistance under section 1902(a)(10)(A) of that Act (42 U.S.C. 1396a(a)(10)(A)), the State uses the same uniform, simplified application form (including, if applicable, permitting application other than in person) for purposes of establishing eligibility for benefits under titles XIX and XXI of that Act.

(B) ELIMINATION OF ASSET TEST.—The State does not apply any asset test for eligibility under section 1902(l) or title XXI of the Social Security Act (42 U.S.C. 1396a(l), 1397aa et seq.) with respect to children.

(C) ADOPTION OF 12-MONTH CONTINUOUS ENROLLMENT.—The State provides that eligibility shall not be regularly redetermined more often than once every year under title XXI of such Act or for children described in section 1902(a)(10)(A) of such Act (42 U.S.C. 1396a(a)(10)(A)).

(D) SAME VERIFICATION AND REDETERMINATION POLICIES; AUTOMATIC REASSESSMENT OF ELIGIBILITY.—With respect to children who are eligible for medical assistance under section 1902(a)(10)(A) of such Act (42 U.S.C. 1396a(a)(10)(A)), the State provides for initial eligibility determinations and redeterminations of eligibility using the same verification policies (including with respect to face-to-face interviews), forms, and frequency as the State uses for such purposes under title XXI of that Act, and, as part of such redeterminations, provides for the automatic reassessment of the eligibility of such children for assistance under titles XIX and XXI.

(E) OUTSTATIONING ENROLLMENT STAFF.—The State provides for the receipt and initial processing of applications for benefits under title XXI of such Act and for children under title XIX of that Act at facilities defined as disproportionate share hospitals under section 1923(a)(1)(A) of such Act (42 U.S.C. 1396r–4(a)(1)(A)) and Federally-qualified health centers described in section 1905(l)(2)(B) of that Act (42 U.S.C. 1396d(l)(2)(B)) consistent with section 1902(a)(55) of that Act (42 U.S.C. 1396a(a)(55)).

(d) PAYMENT AUTHORIZED.—

(1) IN GENERAL.—Notwithstanding any provision of title XIX or XXI of the Social Security Act, or any other provision of law, with respect to a State with a waiver approved under this section that satisfies the requirements of subsection (c) (and that otherwise has a State child health plan approved under title XXI of the Social Security Act), the Secretary shall pay to the State from its allotment under section 2104 of the Social Security Act (42 U.S.C. 1397dd) an amount for each fiscal year (beginning with fiscal year 2002) determined under subparagraph (D) as follows:

(A) BASE EXPENDITURE AMOUNT.—The Secretary shall determine the total amount of expenditures for medical assistance under title XIX of the Social Security Act in the State for children described in paragraph (2) for fiscal year 1995.

(B) CURRENT EXPENDITURE AMOUNT.—The Secretary shall determine the total amount of expenditures for medical assistance under title XIX of such Act in the State for children described in paragraph (2) for the fiscal year involved.

(C) INCREASED EXPENDITURES.—The Secretary shall determine the number (if any) by which the total amount determined under subparagraph (B) exceeds the total amount determined under subparagraph (A).

(D) BONUS AMOUNT.—The amount determined under this subparagraph for a fiscal year is equal to the product of the following:

(i) The total amount determined under subparagraph (C).

(ii) The difference between the enhanced FMAP and the Federal medical assistance percentage for that State for the fiscal year involved.

(2) CHILDREN DESCRIBED.—For purposes of paragraph (1)(A), the children described in this paragraph are—

(A) children who are eligible and enrolled for medical assistance under title XIX of the Social Security Act; and

(B) children who—

(i) would be described in subparagraph (A) but for having family income that exceeds the highest income eligibility level applicable to such individuals under the State plan; and

(ii) would be considered disabled under section 1614(a)(3)(C) of the Social Security Act (42 U.S.C. 1382c(a)(3)(C)) (determined without regard to the reference to age in that section but for having earnings or deemed income or resources, as determined under title XVI of such Act for children) that exceed the requirements for receipt of supplemental security income benefits.

(3) ORDER OF TITLE XXI PAYMENTS.—With respect to a State with a waiver approved under this section, payments to the State under section 2105(a) of the Social Security Act (42 U.S.C. 1397ee(a)) for a fiscal year shall, notwithstanding paragraph (2) of such section, be made in the following order:

(A) First, for expenditures for items described in paragraph (1)(A) of section 2105(a) of such Act.

(B) Second, for expenditures for items described in paragraph (1)(B) of such section.

(C) Third, for the payment authorized under subsection (d)(1) of this section.

(D) Fourth, for expenditures for items described in paragraph (1)(C) of section 2105(a) of the Social Security Act.

(E) Fifth, for expenditures for items described in paragraph (1)(D) of such section.

By Mr. BINGAMAN (for himself, Mr. COCHRAN, Mr. DASCHLE, Mrs. LINCOLN, Ms. COLLINS, Mrs. CARNAHAN, Mr. HUTCHINSON, and Mr. CORZINE):

S. 1626. A bill to provide disadvantaged children with access to dental services; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, the legislation I am introducing today with Senators COCHRAN, DASCHLE, LINCOLN, COLLINS, CARNAHAN, HUTCHINSON of Arkansas, and CORZINE entitled the ''Children's Dental Health Improvement Act of 2001'' is designed to improve the access and delivery of dental health services to our Nation's children through Medicaid, the State Children's Health Insurance Program, SCHIP, the Indian Health Service, IHS, and our Nation's safety net of community health centers.

The oral health problems facing children are highlighted in a landmark report issued by the Surgeon General and the Department of Health and Human Services, HHS, last year entitled Oral Health in America: A Report of the Surgeon General in which he observed that our Nation is facing what amounts to ''a 'silent epidemic' of dental and oral diseases.''

In fact, dental caries, which refers to both decayed teeth or filled cavities, is the most common childhood disease. According to the Surgeon General, ''Among 5- to 17-year olds, dental caries is more than 5 times as common as a reported history of asthma and 7 times as common as hay fever.'' In short, dental care is, as the Surgeon General adds, ''the most prevalent unmet health need among American children.''

The severity of this problem is even greater among children is poverty. Poor children aged 2 to 9 have twice the levels of untreated decayed teeth as nonpoor children. Moreover, the Surgeon General has found that poor Mexican American children have rates of untreated decayed teeth that exceed 70 percent, a rate of true epidemic proportions.

For these children, their personal suffering is real. Many of the oral diseases and disorders can cause severe pain, undermine self-esteem and self-image, discourage normal social interaction, cause other health problems, compromise nutritional status, and lead to chronic stress and depression as well as incur great financial cost. Lack of treatment is estimated to result in a loss of 1.6 million school days annually, according to the National Center for Health Statistics.

The General Accounting Office, GAO, in its April 2000 report, entitled ''Oral Health: Dental Disease is a Chronic Problem Among Low-Income Populations,'' adds, ''Poor children suffer nearly 12 times more restricted-activity days, such as missed school, than higher-income children as a result of dental problems.''

Incredibly, this could all be prevented. As the Surgeon General's report notes, prevention programs in oral health that have been designed and evaluated for children using a variety of fluoride and dental sealant strategies has the ''potential of virtually eliminating dental caries in all children.''

Unfortunately, children do not get the dental services they need. According to the Surgeon General,'' Although over 14 percent of children under 18 have no form of private or public medical insurance, more than twice that many, 23 million children, have no dental insurance.'' The report adds, ''There are at least 2.6 children without dental insurance for each child without medical insurance.''

One important provision in the bill would grant States flexibility to provide dental coverage to low-income children through the State Children's Health Insurance Program, just as States currently are able to do through Medicaid.

Unfortunately, SCHIP law prohibits coverage of children for services unless they are completely uninsured. As authors Ruth Almeida, Ian Hill, and Genevieve Kenney of an Urban Institute report entitled Does SCHIP Spell Better Dental Care for Children? An Early Look at New Initiatives write, ''. . . many low-income children are covered by employer-based or other private health insurance for their medical care, but do not have a comprehensive dental benefit. Because these children are privately insured, they are not eligible for SCHIP and cannot avail themselves of dental coverage under SCHIP. Expanding SCHIP to furnish dental services on a wraparound basis to privately covered low-income children without dental coverage could help achieve broader improvements in children's oral health.''

For low-income children with medical coverage but no dental insurance through the private sector, their only option would be to completely dump their private coverage for their children in order to access SCHIP coverage.

Instead, the ''Children's Dental Health Improvement Act of 2001'' would create an option for states to provide low-income families with the ability to receive wrap-around dental coverage through SCHIP without having to completely drop their private insurance. This reduces the crowd-out of private insurance, which was a priority of the Congress during passage of SCHIP, and it provides low-income children with dental services that other children in the same economic circumstance are already receiving through SCHIP.

In implementing such a change, I want to make it clear that I am in strong support of providing additional funding to SCHIP to ensure that these services are provided without reducing current levels of SCHIP funding. I am concerned about SCHIP funding in forthcoming years, particularly in those years referred to as the ''CHIP dip'' when funding levels drop from over $4 billion annually to around $3 billion. I have other legislation entitled, S. 1016, the ''Start Healthy, Stay Healthy Act of 2001,'' that addresses this very problem.

With those additional funds, I strongly believe that SCHIP, just as Medicaid, should provide services to low-income children who are both uninsured and underinsured. Children need a comprehensive set of child health services, including dental services, to ensure their appropriate health and development.

However, coverage for these services is often not enough. Even when children do have dental coverage, the access to care is often sorely lacking. Medicaid is the largest insurer of dental coverage to children. Yet, despite the design of the Medicaid program to ensure access to comprehensive services for children, including dental care, the Inspector General of the Department of Health and Human Services reported in 1996 that only 18 percent of children eligible for Medicaid received even a single preventive dental service. The same report shows that no State provides preventive services to more than 50 percent of eligible children. The factors are complex but the primary one is due to limited dentist participation in Medicaid.

According to GAO, in its September 2000 report entitled Oral Health: Factors Contributing to Low Use of Dental Services by Low-Income Populations, ''Of 39 states that provided information about dentists' participation in Medicaid, 23 reported that fewer than half of the states' dentists saw at least one Medicaid patient during 1999.'' Even worse, a 1998 survey by the National Conference of State Legislatures indicates that fewer than 20 percent of dentists participate in the Medicaid program nationwide.

The GAO concludes poor participation rates by dentists is due in large part to poor reimbursement rates in Medicaid. As the GAO points out, ''Our analysis showed that Medicaid payment rates are often well below dentists' normal fees. Only 13 states had Medicaid rates that exceeded two-thirds of the average regional fees dentists charged. . . .''

Clearly, Medicaid is chronically underfunded with respect to dental care. The Surgeon General's report notes, ''On average, state Medicaid agencies contribute only 2.3 percent of their child health expenditures to dental care, whereas nationally, the percentage of all child health expenditures dedicated to dental care is more than 10 times that rate, almost 30 percent.''

The good news is that many States, including New Mexico, are taking actions to improve the participation of dentists in the Medicaid program by raising low payment rates and reducing administrative requirements. These efforts were highlighted by the GAO in its September 2000 report. To further encourage such efforts, the ''Children's Dental Health Improvement Act of 2001'' provides $50 million annually as financial incentives and planning grants to states to undertake additional improvements in their Medicaid programs delivery of dental health services to children.

In addition to Medicaid and SCHIP, the federal government administers other health care programs providing dental services or providers for low-income children and their families, including services administered by community health centers and the Indian Health Service, IHS. Unfortunately, both of these programs are underfunded and, as the GAO found, ''report difficulty in meeting the dental needs of their target populations.''

For example, the GAO found that ''HHS and health center officials report that the demand for dental services significantly exceeds the, urban and rural health, centers' capacity to deliver it. In 1998 . . ., a little more than half of the nearly 700 health center grantees funded under this program had active dental programs.'' This is also true for public health departments across the country.

To assist the health centers and public health departments with this need, the ''Children's Dental Health Improvement Act of 2001'' provides $40 million to community health centers and public health departments to expand dental health services through the hiring of additional dental health professionals to serve low-income populations.

This is particularly a problem that needs to be addressed in areas with severe dental health professional shortages, such as New Mexico. For example, New Mexico ranked next to last in the Nation with just 32.1 dentists per 100,000 population in 1998, according to HHS. This compares to the national average of 48.4 per 100,000. Moreover, the number of dentists in New Mexico declined by 7 percent between 1991 and 1998 while the State's population grew 12 percent. The result was a 17 percent decline in dentists per capita during the period.

With regard to American Indian and Alaska Native populations, the need is so great and the funding so little that a comprehensive solution is requiring throughout the IHS system. With respect to the unmet need, the GAO notes that ''American Indian and Alaska Native children aged 2 to 4 years old have five times the rate of dental decay that all children have.''

Unfortunately, the GAO adds, ''. . . about one-fourth of IHS' dentist positions at 269 HIS and tribal facilities were vacant in April 2000. Vacancies have been chronic at IHS facilities, in the past 5 years, at least 67 facilities have had one or more dentist position vacant for at least a year. According to IHS officials, the primary reason for these vacancies is that IHS is unable to provide a competitive salary for new dentists. . .''

The GAO continues, ''The IHS' dental personnel shortages translate into a large unmet need for dental services among American Indians and Alaska Natives. IHS reports that only 24 percent of the eligible population had a dental visit in 1998. The personnel shortages have also reduced the scope of services that facilities are able to provide. According to IHS officials, available services have concentrated more on acute and emergency care, while routine and restorative care have dropped as a percentage of workload. Emergency services increased from one-fifth of the workload in 1990 to more than one-third of the workload in 1999.'

To help alleviate this workforce shortage, the ''Children's Dental Health Improvement Act of 2001'' provides IHS with the authority to offer multi-year retention bonuses to dental providers offering services through the IHS and tribal programs.

The bill also provides for some technical amendments to ensure that tribal organizations and community health centers are allowed to apply for school-based dental sealant funding from the Centers for Disease Control and Prevention, CDC.

And finally, to help address this ''silent epidemic,'' HHS implemented what is referred to as the Oral Health Initiative, OHI, to coordinate dental health services in both the Health Resources and Services Administration, HRSA, and the Center for Medicaid and Medicare Services, CMS, formerly known as the Health Care Financing Administration. Despite the progress of the Initiative, it has no legal authority unlike other programs that target specific health needs of children, such as Emergency Medical Services for Children or the Traumatic Brain Injury Program. Because it lacks formal status and program control, the OHI is susceptible to future disruptions or dispanding.

To ensure the continuation of the OHI, the ''Children's Health Improvement Act of 2001'' provides statutory authority for the OHI and authorized funding of $25 million to improve the oral health of low-income populations served by both the public and private sector.

The bipartisan legislation I am introducing today would improve the access and delivery of dental health services to our Nation's children through Medicaid, the State Children's Health Insurance Program, SCHIP, the Indian Health Service, IHS, and our Nation's safety net of community health centers. These problems are well-documented and call out for congressional action as soon as possible.

I would like to thank the American Dental Association, the American Dental Education Association, the American Academy of Pediatric Dentistry, the National Association of Community Health Centers, Inc., the National Association of Children's Hospitals, the American Dental Hygienists' Association, and the Children's Dental Health Project for their outstanding support and/or their technical advice on this legislation. This bill is a result of their outstanding work.

In particular, I want to thank Dr. Burt Edelstein and Libby Mullin of the Children's Dental Health Project for their vast knowledge and technical assistance on this issue. I want to thank Judy Sherman of the American Dental Association, Myla Moss of the American Dental Education Association, Dr. Heber Simmons and Scott Litch of the American Academy of Pediatric Dentistry, Karen Sealander of the American Dental Hygienists' Association, and Heather Mizeur of the National Association of Community Health Centers, Inc., for their valuable insight, technical advice, and support for this legislation. I look forward to working with them all to ensure that we achieve increased access to oral health care for our children.

In addition to those organizations, I would like to thank the following groups for their support of the bill, including: Academy of General Dentistry, American Academy of Child and Adolescent Psychiatry, American Academy of Oral and Maxillofacial Pathology, American Academy of Periodontology, American Association of Dental Examiners, American Association of Dental Research, American

Association of Endodontists, American Association of Public Health Dentistry, American Association of Oral and Maxillofacial Surgeons, American Association of Orthodontists, American Association of Women Dentists, American College of Dentists, American College of Preventive Medicine, American Dental Trade Association, American Public Health Association, American Society of Dentistry for Children, American Student Dental Association, Association of Clinicians of the Underserved, Association of Maternal and Child Health Programs, Association of State and Territorial Dental Directors, Dental Dealers of America, Dental Manufacturers of America, Inc., Family Voices, Hispanic Dental Association, International College of Dentists, USA, March of Dimes, National Association of City and County Health Officers, National Association of Local Boards of Health, National Dental Association, National Health Law Program, New Mexico Department of Health, Partnership for Prevention, Society of American Indian Dentists, Special Care Dentistry, and United Cerebral Palsy Associations.

I request unanimous consent that a Fact Sheet and the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1626

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Children's Dental Health Improvement Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—IMPROVING DELIVERY OF PEDIATRIC DENTAL SERVICES UNDER MEDICAID AND SCHIP

SEC. 101. GRANTS TO IMPROVE THE PROVISION OF DENTAL SERVICES UNDER MEDICAID AND SCHIP.

Title V of the Social Security Act (42 U.S.C. 701 et seq.) is amended by adding at the end the following:

''SEC. 511. GRANTS TO IMPROVE THE PROVISION OF DENTAL SERVICES UNDER MEDICAID AND SCHIP.

''(a) AUTHORITY TO MAKE GRANTS.—In addition to any other payments made under this title to a State, the Secretary shall award grants to States that satisfy the requirements of subsection (b) to improve the provision of dental services to children who are enrolled in a State plan under title XIX or a State child health plan under title XXI (in this section, collectively referred to as the 'State plans').

''(b) REQUIREMENTS.—In order to be eligible for a grant under this section, a State shall provide the Secretary with the following assurances:

''(1) IMPROVED SERVICE DELIVERY.—The State shall have a plan to improve the delivery of dental services to children who are enrolled in the State plans, including providing outreach and administrative case management, improving collection and reporting of claims data, and providing incentives, in addition to raising reimbursement rates, to increase provider participation.

''(2) ADEQUATE PAYMENT RATES.—The State has provided for payment under the State plans for dental services for children at levels consistent with the market-based rates and sufficient enough to enlist providers to treat children in need of dental services.

''(3) ENSURED ACCESS.—The State shall ensure it will make dental services available to children enrolled in the State plans to the same extent as such services are available to the general population of the State.

''(c) APPLICATION.—A State shall submit an application to the Secretary for a grant under this section in such form and manner and containing such information as the Secretary may require.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to make grants under this section $50,000,000 for fiscal year 2002 and each fiscal year thereafter.

''(e) APPLICATION OF OTHER PROVISIONS OF TITLE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the other provisions of this title shall not apply to a grant made under this section.

''(2) EXCEPTIONS.—The following provisions of this title shall apply to a grant made under subsection (a) to the same extent and in the same manner as such provisions apply to allotments made under section 502(c):

''(A) Section 504(b)(6) (relating to prohibition on payments to excluded individuals and entities).

''(B) Section 504(c) (relating to the use of funds for the purchase of technical assistance).

''(C) Section 504(d) (relating to a limitation on administrative expenditures).

''(D) Section 506 (relating to reports and audits), but only to the extent determined by the Secretary to be appropriate for grants made under this section.

''(E) Section 507 (relating to penalties for false statements).

''(F) Section 508 (relating to nondiscrimination).

''(G) Section 509 (relating to the administration of the grant program).''.

SEC. 102. AUTHORITY TO PROVIDE DENTAL COVERAGE UNDER SCHIP AS A SUPPLEMENT TO OTHER HEALTH COVERAGE.

(a) AUTHORITY TO PROVIDE COVERAGE.—

(1) SCHIP.—

(A) IN GENERAL.—Section 2105(a)(1)(C) of the Social Security Act (42 U.S.C. 1397ee(a)(1)(C)) is amended—

(i) by inserting ''(i)'' after ''(C)''; and

(ii) by adding at the end the following:

''(ii) notwithstanding clause (i), in the case of a State that satisfies the conditions described in subsection (c)(8), for child health assistance that consists only of coverage of dental services for a child who would be considered a targeted low-income child if that portion of subparagraph (C) of section 2110(b)(1) relating to coverage of the child under a group health plan or under health insurance coverage did not apply, and such child has such coverage that does not include dental services; and''.

(B) CONDITIONS DESCRIBED.—Section 2105(c) of the Social Security Act (42 U.S.C. 1397ee(c)) is amended by adding at the end the following:

''(8) CONDITIONS FOR PROVISION OF DENTAL SERVICES ONLY COVERAGE.—For purposes of subsection (a)(1)(C)(ii), the conditions described in this paragraph are the following:

''(A) INCOME ELIGIBILITY.—The State child health plan (whether implemented under title XIX or this XXI)—

''(i) has the highest income eligibility standard permitted under this title as of January 1, 2001;

''(ii) subject to subparagraph (B), does not limit the acceptance of applications for children; and

''(iii) provides benefits to all children in the State who apply for and meet eligibility standards.

''(B) NO WAITING LIST IMPOSED.—With respect to children whose family income is at or below 200 percent of the poverty line, the State does not impose any numerical limitation, waiting list, or similar limitation on the eligibility of such children for child health assistance under such State plan.''.

(C) STATE OPTION TO WAIVE WAITING PERIOD.—Section 2102(b)(1)(B) of the Social Security Act (42 U.S.C. 1397bb(b)(1)(B)) is amended—

(i) in clause (i), by striking ''and'' at the end;

(ii) in clause (ii), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following new clause:

''(iii) at State option, may not apply a waiting period in the case of child described in section 2105(a)(1)(C)(ii), if the State satisfies the requirements of section 2105(c)(8) and provides such child with child health assistance that consists only of coverage of dental services.''.

(2) APPLICATION OF ENHANCED MATCH UNDER MEDICAID.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) in subsection (b), in the fourth sentence, by striking ''or subsection (u)(3)'' and inserting ''(u)(3), or (u)(4)''; and

(B) in subsection (u)—

(i) by redesignating paragraph (4) as paragraph (5); and

(ii) by inserting after paragraph (3) the following new paragraph:

''(4) For purposes of subsection (b), the expenditures described in this paragraph are expenditures for dental services for children described in section 2105(a)(1)(C)(ii), but only in the case of a State that satisfies the requirements of section 2105(c)(8).''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on October 1, 2001 and apply to child health assistance and medical assistance provided on or after that date.

TITLE II—IMPROVING DELIVERY OF PEDIATRIC DENTAL SERVICES UNDER COMMUNITY HEALTH CENTERS, PUBLIC HEALTH DEPARTMENTS, AND THE INDIAN HEALTH SERVICE

SEC. 201. GRANTS TO IMPROVE THE PROVISION OF DENTAL HEALTH SERVICES THROUGH COMMUNITY HEALTH CENTERS AND PUBLIC HEALTH DEPARTMENTS.

Part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by insert before section 330, the following:

''SEC. 329. GRANT PROGRAM TO EXPAND THE AVAILABILITY OF SERVICES.

''(a) IN GENERAL.—The Secretary, acting through the Health Resources and Services Administration, shall establish a program under which the Secretary may award grants to eligible entities and eligible individuals to expand the availability of primary dental care services in dental health professional shortage areas or medically underserved areas.

''(b) ELIGIBILITY.—

''(1) ENTITIES.—To be eligible to receive a grant under this section an entity—

''(A) shall be—

''(i) a health center receiving funds under section 330 or designated as a Federally qualified health center;

''(ii) a county or local public health department, if located in a federally-designated dental health professional shortage area;

''(iii) an Indian tribe or tribal organization (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)); or

''(iv) a dental education program accredited by the Commission on Dental Accreditation; and

''(B) shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(2) INDIVIDUALS.—To be eligible to receive a grant under this section an individual shall—

''(A) be a dental health professional licensed or certified in accordance with the laws of State in which such individual provides dental services;

''(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require; and

''(C) provide assurances that—

''(i) the individual will practice in a federally-designated dental health professional shortage area; and

''(ii) not less than 33 percent of the patients of such individual are—

''(I) receiving assistance under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

''(II) receiving assistance under a State plan under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.); or

''(III) uninsured.

''(c) USE OF FUNDS.—

''(1) ENTITIES.—An entity shall use amounts received under a grant under this section to provide for the increased availability of primary dental services in the areas described in subsection (a). Such amounts may be used to supplement the salaries offered for individuals accepting employment as dentists in such areas.

''(2) INDIVIDUALS.—A grant to an individual under subsection (a) shall be in the form of a $1,000 bonus payment for each month in which such individual is in compliance with the eligibility requirements of subsection (b)(2)(C).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—Notwithstanding any other amounts appropriated under section 330 for health centers, there is authorized to be appropriated $40,000,000 for each of fiscal years 2002 through 2006 to hire and retain dental health care providers under this section.

''(2) USE OF FUNDS.—Of the amount appropriated for a fiscal year under paragraph (1), the Secretary shall use—

''(A) not less than 75 percent of such amount to make grants to eligible entities; and

''(B) not more than 25 percent of such amount to make grants to eligible individuals.''.

SEC. 202. DENTAL OFFICER MULTIYEAR RETENTION BONUS FOR THE INDIAN HEALTH SERVICE.

(a) TERMS AND DEFINITIONS.—In this section:

(1) CREDITABLE SERVICE.—The term ''creditable service'' includes all periods that a dental officer spent in graduate dental educational (GDE) training programs while not on active duty in the Indian Health Service and all periods of active duty in the Indian Health Service as a dental officer.

(2) DENTAL OFFICER.—The term ''dental officer'' means an officer of the Indian Health Service designated as a dental officer.

(3) DIRECTOR.—The term ''Director'' means the Director of the Indian Health Service.

(4) RESIDENCY.—The term ''residency'' means a graduate dental educational (GDE) training program of at least 12 months leading to a specialty, including general practice residency (GPR) or an advanced education general dentistry (AEGD).

(5) SPECIALTY.—The term ''specialty'' means a dental specialty for which there is an Indian Health Service specialty code number.

(b) REQUIREMENTS FOR BONUS.—

(1) IN GENERAL.—An eligible dental officer of the Indian Health Service who executes a written agreement to remain on active duty for 2, 3, or 4 years after the completion of any other active duty service commitment to the Indian Health Service may, upon acceptance of the written agreement by the Director, be authorized to receive a dental officer multiyear retention bonus under this section. The Director may, based on requirements of the Indian Health Service, decline to offer such a retention bonus to any specialty that is otherwise eligible, or to restrict the length of such a retention bonus contract for a specialty to less than 4 years.

(2) LIMITATIONS.—Each annual dental officer multiyear retention bonus authorized under this section shall not exceed the following:

(A) $14,000 for a 4-year written agreement.

(B) $8,000 for a 3-year written agreement.

(C) $4,000 for a 2-year written agreement.

(c) ELIGIBILITY.—

(1) IN GENERAL.—In order to be eligible to receive a dental officer multiyear retention bonus under this section, a dental officer shall—

(A) be at or below such grade as the Director shall determine;

(B) have completed any active duty service commitment of the Indian Health Service incurred for dental education and training or have 8 years of creditable service;

(C) have completed initial residency training, or be scheduled to complete initial residency training before September 30 of the fiscal year in which the officer enters into a dental officer multiyear retention bonus written service agreement under this section; and

(D) have a dental specialty in pediatric dentistry or oral and maxillofacial surgery.

(2) EXTENSION TO OTHER OFFICERS.—The Director may extend the retention bonus to dental officers other than officers with a dental specialty in pediatric dentistry, as well as to other dental hygienists with a minimum of a baccalaureate degree, based on demonstrated need.

(d) TERMINATION OF ENTITLEMENT TO SPECIAL PAY.—The Director may terminate, with cause, at any time a dental officer's multiyear retention bonus contract under this section. If such a contract is terminated, the unserved portion of the retention bonus contract shall be recouped on a pro rata basis. The Director shall establish regulations that specify the conditions and procedures under which termination may take place. The regulations and conditions for termination shall be included in the written service contract for a dental officer multiyear retention bonus under this section.

(e) REFUNDS.—

(1) IN GENERAL.—Prorated refunds shall be required for sums paid under a retention bonus contract under this section if a dental officer who has received the retention bonus fails to complete the total period of service specified in the contract, as conditions and circumstances warrant.

(2) DEBT TO UNITED STATES.—An obligation to reimburse the United States imposed under paragraph (1) is a debt owed to the United States.

(3) NO DISCHARGE IN BANKRUPTCY.—Notwithstanding any other provision of law, a discharge in bankruptcy under title 11, United States Code, that is entered less than 5 years after the termination of a retention bonus contract under this section does not discharge the dental officer who signed such a contract from a debt arising under the contract or under paragraph (1).

SEC. 203. STREAMLINE PROCESS FOR DESIGNATING DENTAL HEALTH PROFESSIONAL SHORTAGE AREAS.

Section 332(a) of the Public Health Service Act (42 U.S.C. 254e(a)) is amended by adding at the end the following:

''(4) In designating health professional shortage areas under this section, the Secretary may designate certain areas as dental health professional shortage areas if the Secretary determines that such areas have a severe shortage of dental health professionals. The Secretary shall, in consultation with State and local dental societies and tribal health organizations, streamline the process to develop, publish and periodically update criteria to be used in designating dental health professional shortage areas.''.

SEC. 204. DEMONSTRATION PROJECTS TO INCREASE ACCESS TO PEDIATRIC DENTAL SERVICES IN UNDERSERVED AREAS.

(a) AUTHORITY TO CONDUCT PROJECTS.—The Secretary of Health and Human Services, through the Administrator of the Health Resources and Services Administration and the Director of the Indian Health Service, shall establish demonstration projects that are designed to increase access to dental services for children in underserved areas, as determined by the Secretary.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE III—IMPROVING ORAL HEALTH PROMOTION AND DISEASE PREVENTION PROGRAMS

SEC. 301. ORAL HEALTH INITIATIVE.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish an oral health initiative to reduce the profound disparities in oral health by improving the health status of vulnerable populations, particularly low-income children, to the level of health status that is enjoyed by the majority of Americans.

(b) ACTIVITIES.—The Secretary of Health and Human Services shall, through the oral health initiative—

(1) carry out activities to improve intra- and inter-agency collaborations, including activities to identify, engage, and encourage existing Federal and State programs to maximize their potential to address oral health;

(2) carry out activities to encourage public-private partnerships to engage private sector communities of interest (including health professionals, educators, State policymakers, foundations, business, and the public) in partnerships that promote oral health and dental care; and

(3) carry out activities to reduce the disease burden in high risk populations through the application of best-science in oral health, including programs such as community water fluoridation and dental sealants.

(c) COORDINATION.—The Secretary of Health and Human Services shall—

(1) through the Administrator of the Centers for Medicare & Medicaid Services (formerly known as the Health Care Financing Administration) establish a Chief Dental Officer for the medicaid and State children's health insurance programs established under titles XIX and XXI, respectively, of the Social Security Act (42 U.S.C. 1396 et seq. 1397aa et seq.); and

(2) carry out this section in collaboration with such Administrator and Chief Dental Officer and the Administrator and Chief Dental Officer of the Health Resources and Services Administration.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $25,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year.

SEC. 302. CDC REPORTS.

(a) COLLECTION OF DATA.—The Director of the Centers for Disease Control and Prevention in collaboration with other organizations and agencies shall annually collect data describing the dental, craniofacial, and oral health of residents of at least 1 State and 1 Indian tribe from each region of the Department of Health and Human Services.

(b) REPORTS.—The Director of the Centers for Disease Control and Prevention shall compile and analyze data collected under subsection (a) and annually prepare and submit to the appropriate committees of Congress a report concerning the oral health of certain States and tribes.

SEC. 303. EARLY CHILDHOOD CARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, shall—

(1) expand existing surveillance activities to include the identification of children at high risk of early childhood caries;

(2) assist State, local, and tribal health agencies and departments in collecting, analyzing and disseminating data on early childhood caries; and

(3) provide for the development of public health nursing programs and public health education programs on early childhood caries prevention.

(b) APPROPRIATENESS OF ACTIVITIES.—The Secretary of Health and Human Services shall carry out programs and activities under subsection (a) in a culturally appropriate manner with respect to populations at risk of early childhood caries.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary for each fiscal year.

SEC. 304. SCHOOL-BASED DENTAL SEALANT PROGRAM.

Section 317M(c) of the Public Health Service Act (as added by section 1602 of Public Law 106-310)) is amended—

(1) in paragraph (1), by inserting ''and school-linked'' after ''school-based'';

(2) in the first sentence of paragraph (2)—

(A) by inserting ''and school-linked'' after ''school-based''; and

(B) by inserting ''or Indian tribe'' after ''State''; and

(3) by striking paragraph (3) and inserting the following:

''(3) ELIGIBILITY.—To be eligible to receive funds under paragraph (1), an entity shall—

''(A) prepare and submit to the State or Indian tribe an application at such time, in such manner and containing such information as the State or Indian tribe may require; and

''(B) be a—

''(i) public elementary or secondary school—

''(I) that is located in an urban area in which and more than 50 percent of the student population is participating in Federal or State free or reduced meal programs; or

''(II) that is located in a rural area and, with respect to the school district in which the school is located, the district involved has a median income that is at or below 235 percent of the poverty line, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)); or

''(ii) public or non-profit health organization, including a grantee under section 330, that is under contract with an elementary or secondary school described in subparagraph (B) to provide dental services to school-age children.''.

FACT SHEET—CHILDREN'S DENTAL HEALTH IMPROVEMENT ACT OF 2001

Senators Jeff Bingaman (D–NM), Thad Cochran (R–MS), Blanche Lincoln (D–AR), Tom Daschle (D–SD), Susan Collins (R–ME), Jean Carnahan (D–MO), Tim Hutchinson (R–AR), and Jon Corzine (D–NJ) are preparing to introduce the ''Children's Dental Health Improvement Act of 2001.'' The legislation seeks to improve the access and delivery of dental care to children across the country.

PROBLEMS AND SOLUTIONS

Lack of Coverage for Children

According to the Surgeon General's report, Oral Health in America: A Report of the Surgeon General, that was issued in 2000, ''Although over 14 percent of children under 18 have no form of private or public medical insurance, more than twice that many, 23 million children, have no dental insurance.'' The report adds, ''There are at least 2.6 children without dental insurance for each child without medical insurance.''

Moreover, according to the General Accounting Office in a report entitled Factors Contributing to Low Use of Dental Services by Low-Income Populations (Sept. 2000), AHHS and health center officials report that the demand for dental services significantly exceeds the [urban and rural health] centers' capacity to delivery it. In 1998 . . ., a little more than half of the nearly 700 health center grantees funded under this program had active dental programs.''

Legislative Proposal: The legislation would improve the dental health of uninsured children by: Allowing states the flexibility to utilize the State Children's Health Insurance Program (SCHIP) to provide dental coverage to low-income children below 200 percent of poverty that may have private insurance for medical care but not dental services; and providing $40 million to community health centers and public health departments to expand dental health services through the hiring of additional dentist health professionals to serve low-income children.

Lack of Access to Care

According to the GAO, ''While several factors influence the access low-income groups have to dental care, the primary one is limited dentist participation in Medicaid . . . Of 39 states that provided information about dentists' participation in Medicaid, 23 reported that fewer than half of the states' dentists saw at least one Medicaid patient during 1999.''

The GAO concludes this is due in large part to poor reimbursement rates in Medicaid. As the GAO adds, ''Our analysis showed that Medicaid payment rates are often well below dentists' normal fees. Only 13 states had Medicaid rates that exceeded two-thirds of the average regional fees dentists charged. . ..''

Legislative Proposal: The legislation seeks to improve access to dental services for low-income children in the Medicaid program by providing $50 million as financial incentives and planning grants to states to improve their Medicaid programs in terms of adequate payment rates, access to care, and improved service delivery.

Lack of Providers in Federally Funded Programs

With respect to community health centers, the GAO notes, ''HHS and health center officials report that the demand for dental services significantly exceeds the [urban and rural health] centers' capacity to delivery it. In 1998 . . ., a little more than half of the nearly 700 health center grantees funded under this program had active dental programs.''

With respect to the Indian Health Service (IHS) the GAO adds, ''. . . about one-fourth of IHS'' dentist positions at 269 IHS and tribal facilities were vacant in April 2000. Vacancies have been chronic at IHS facilities—in the past 5 years, at least 67 facilities have had one or more dentist positions vacant for at least a year. According to IHS officials, the primary reason for these vacancies is that IHS is unable to provide a competitive salary for new dentists.''

Legislative Proposal: The legislation seeks to improve access to dental services for children served by community health centers and the Indian Health Service by: Again, providing $40 million to community health centers and public health departments to expand dental health services through the hiring of additional dental health professionals to serve low-income children; and providing the Indian Health Service with the authority to offer multi-year retention bonuses to dental providers offering service through the IHS and tribal programs.

Need for Improved Coordination and Collaboration

Despite Medicaid and SCHIP, dental care is the least utilized core pediatric health service for low-income children. There are 2.6 times more children lacking dental coverage than health coverage and over a hundred million Americans without dental insurance. Dental care is the most frequently cited unmet health need of children, according to their parents. In fact, the Health Interview Survey reveals that the unmet need is three times greater than unmet need for medical care, four times greater than unmet need for prescription drugs, and five times greater than unmet need for vision care. The third National Health and Nutrition Interview Survey showed that dental caries [or dental decay] is the most prevalent chronic disease of childhood.

To help address this ''hidden epidemic,'' the Department of Health and Human Services (HHS) enacted the Oral Health Initiative (OHI) to coordinate dental health services in both the Health Resources and Services Administration (HRSA) and the Center for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration).

Despite the progress of the initiative, it has no legal authority unlike other programs

that target specific health needs of children (e.g., Emergency Medical Services for Children and the Traumatic Brain Injury Program). Because it lacks formal status and program control, the OHI is susceptible to future disruptions or disbanding.

Legislative Proposal: The legislation provides statutory authority for the OHI and authorized funding of $25 million to improve the oral health of low-income populations served by both the public and private sector.

Other Provisions

In addition, the legislation contains the following technical provisions:

Dental Health Professional Shortage Area Designation: The bill streamlines the process for the designation of dental health professional shortage areas.

Technical School-Based Sealant Provisions: The bill includes technical provisions ensuring that entities eligible for funding include both ''school-linked'' as well as school-based organizations, clarifies that an eligible entitle can be a public or non-profit health organization or tribal organization.

Demonstration: The bill creates authority for HHS to establish demonstration projects to increase access to dental services for children in underserved areas.

ENDORSING ORGANIZATIONS

American Dental Association, American Dental Education Association, American Academy of Pediatric Dentistry, National Association of Community Health Centers, Inc., National Association of Children's Hospitals, American Dental Hygienists' Association, Academy of General Dentistry, American Academy of Child and Adolescent Psychiatry, American Academy of Oral and Maxillofacial Pathology, American Academy of Periodontology, American Association of Dental Examiners, American Association of Dental Research, American Association of Endodontists, American Association of Public Health Dentistry, American Association of Oral and Maxillofacial Surgeons, American Association of Orthodontists, American Association of Women Dentists, American College of Dentists, American College of Preventive Medicine, American Dental Trade Association, American Public Health Association, American Society of Dentistry for Children, American Student Dental Association, Association of Clinicians of the Underserved, Association of Maternal and Child Health Programs, Association of State and Territorial Dental Directors, Dental Dealers of America, Dental Manufacturers of America, Inc., Family Voices, Hispanic Dental Association, International College of Dentists USA, March of Dimes, National Association of City and County Health Officers, National Association of Local Boards of Health, National Dental Association, National Health Law Program, New Mexico Department of Health, Partnership for Prevention, Society of American Indian Dentists, Special Care Dentistry, and United Cerebral Palsy Associations.

Mrs. CARNAHAN. Mr. President, I would like to bring your attention to a hidden epidemic. This epidemic affects the overall health of children, especially children in low-income families. It has been called a ''hidden epidemic'' because it can be difficult to detect at a glance, and because it receives relatively little attention as a threat to children's health. But while this epidemic is ''hidden,'' it manifests itself every day in the smiles of America's children.

The epidemic I am referring to is that of poor dental health. Dental decay, a major cause of tooth loss, is the most prevalent chronic disease of childhood. Each year, dental conditions cause children in the U.S. to miss more than 750,000 days of school. One in ten children between the ages of five and eleven has never visited a dentist. This is a shocking and distressing statistic. The unfortunate trend cannot be allowed to continue.

States are working hard to offer dental health services through their Medicaid programs and the State Children's Health Insurance Program, but they need our help in meeting the challenge. The General Accounting Office reported that the biggest reason low-income people lack dental care is that not enough dentists participate in Medicaid. In Missouri, as in other states, some dentists simply choose not to accept Medicaid patients, while others cannot afford to accept them because Medicaid reimbursement is not sufficient to cover the costs of providing care. In Missouri, there are more than 1,000 children on Medicaid for every dentist willing to serve them.

As a result, Medicaid patients must search far and wide to find a dentist and then face another challenge in traveling long distances to see that dentist. Often, this requires hours of planning to arrange for public or Medicaid-provided transportation, and several more hours of waiting after the visit to be picked up and returned home. For many lower-income parents, these hours away from work will severely cut into the family's income. Is it any wonder why so many children do not get the preventive dental care they need, and are not seen by a dentist until they are in intense pain or have infections so severe that their eyes have swelled shut? We cannot let this continue to happen to children in the United States.

There are many reasons for protecting children's oral health. For instance, we know that when children have healthy smiles:

They chew more easily and gain more nutrients from the foods they eat.

They learn to speak more quickly and clearly.

They look and feel more attractive improving self-confidence and willingness to communicate with others.

They have better school attendance and pay more attention in class.

They avoid extensive and costly treatment of dental disease.

And they begin a lifetime of good dental habits.

For all of these reasons, I am proud to join with Senators BINGAMAN, COCHRAN, CORZINE, COLLINS, DASCHLE, HUTCHISON, and LINCOLN in introducing the Children's Dental Health Improvement Act. This bipartisan bill would improve dental care for low-income children. I appreciate Senator BINGAMAN'S leadership on this bill, and I am honored for the opportunity to work with him on this important issue. In order to make real improvements in our current situation, this legislation takes a multi-faceted approach that addresses each component of the problem.

First, this bill would give States the option to provide dental coverage through the State Children's Health Insurance Program to low-income children who may have private insurance for medical care but not for dental services. Part of the reason for the epidemic in dental health is a lack of insurance for dental services. For every child without health insurance, there are nearly three children who are uninsured for dental care. By providing more of these children with insurance, we can reduce their dental care costs—one of the many barriers that low-income families face in getting dental care for their children. Although the bill does not call for additional SCHIP funding, I support a separate funding increase for this program. This increase is essential to giving States the ability to expand coverage to dental services, especially States like Missouri, whose SCHIP programs are doing an excellent job and as a result spend all of their existing funding.

Second, this bill would invest $25 million in and provide statutory authority to the Federal Oral Health Initiative. The Department of Health and Human Services initiated the Oral Health Initiative to coordinate its dental health services. These funds would be used to promote public-private partnerships and cooperation among Federal agencies in order to reduce the profound disparities in oral health among vulnerable populations. Low-income people are the hardest hit when it comes to dental disease. Compared to their counterparts in higher-income families, poor children have five times more untreated dental disease and poor teens are half as likely to visit a dentist annually. Giving legal authority to this Initiative will allow it to work on improving access to dental health without fear of future disruptions or disbanding and the increased funding will allow for the Oral Health Initiative's much-needed expansion.

Third, this bill would offer States the opportunity to apply for $50 million in Federal grants to assist them in improving dental coverage for children through Medicaid. The financial incentives and planning grants included in the bill would enable states to improve payment rates, access to care, and service delivery. It also includes an investment of $40 million for community health centers and public health departments to increase the number of dental health professionals who serve low-income children. With these funds, we can increase access to dental care for low-income children, shorten travel times and the wait for a dental appointment. This is especially important in rural areas, which generally face a greater shortage of providers.

The Children's Dental Health Improvement Act has gained the support of over twenty dental health organizations, including the American Academy of Pediatric Dentistry and the

American Dental Association. Other supporters include the American Academy of Pediatrics, the National Association of Children's Hospitals, and the National Association of Community Health Centers. With their support, and the leadership of my fellow cosponsors of this bill, I hope that we can have a profound impact on dental health and ensure that America's low-income children will have healthy, beautiful smiles.

By Mrs. FEINSTEIN (for herself, Mr. KYL, Ms. SNOWE, Mr. HATCH, Mr. THURMOND, Mr. BOND, and Mr. KOHL):

S. 1627. A bill to enhance the security of the international borders of the United States; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise to join with the distinguished Senator from Arizona, who is my ranking member on the Technology and Terrorism Subcommittee of Judiciary, to introduce a piece of legislation.

On October 12, the committee held a hearing on what could be done to technologically improve our visa entry system. It has become very clear, now that we know all 19 of the terrorists essentially had, at some time, valid visas, that our system is such that it really cannot countermand or alert our Government to any possible terrorist entering this country legally through our visa system.

We have about 7 million nonimmigrants entering the U.S. a year. About 4 million of them disappear and are unaccounted for. We have 23 million people coming in on visa waivers from 29 different countries. We have an unregulated student visa program. And we also have about 300 million people coming across borders back and forth. We have about 5 million containers a year that come in through the ports of entry, fewer than 2 percent of them searched.

The ranking member, the distinguished Senator from Arizona, and I have been very concerned about this. As a product of the hearing, we believed that the most important thing we could do was create a centralized data base, using cutting-edge technology, and also enabling that data base to interface between our intelligence agencies, our law enforcement agencies, and our State Department, to create a kind of lookout data base so that the situation that happened—whereby in Saudi Arabia 15 terrorists came in to the State Department consul's office and got visas, and we were told there was no intelligence to alert the system—would not, in fact, happen in the future. This legislation would create that kind of centralized, integrated data base.

Additionally, we provide for a biometric visa smart card. We provide that all Federal identity permit and license documents be fraud-resistant and tamper-resistant. We provide for passenger manifests of all commercial transportation vehicles to go into that data base, again, so that it can alert the proper authorities about who is about to come into the U.S. Law enforcement information, intelligence information all combine to send certain signals.

We also provide regulation and school responsibility for the student visa program. I am very pleased to indicate that Senator KYL and I are joined by Senators KOHL, SNOWE, HATCH, THURMOND, and BOND.

I would like to now defer to my colleague from Arizona, the ranking member of our Technology and Terrorism Subcommittee.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I thank Senator FEINSTEIN, the chairman of the Technology and Terrorism Subcommittee of the Judiciary Committee, for her leadership both in the holding of the hearing that she mentioned, as well as putting together the legislation we introduce this evening.

Something happened on September 11 that, with one exception, really had not happened since the War of 1812 when British soldiers came into the United States and literally attacked Americans on our own soil. Except for the first attack on the World Trade Center, that did not happen again until September 11, when over 6,000 people were killed by foreigners who were here and attacked Americans in our country.

At that point, we began to realize that we had to begin to close the loopholes in our immigration system that, frankly, were allowing just about anybody and everybody to come into this country and, as we have learned, to do some very bad things to Americans here in our own country.

So this legislation would do a variety of things, as Senator FEINSTEIN has said, beginning with the creation of a data base that would enable us to know what the FBI knows, what the CIA knows, what the INS knows, what the State Department knows.

Today, these different computers do not talk to each other, so that when a consular officer is asked to grant a visa to someone, he may have no information indicating this person should be denied the visa, yet it is quite possible that person is not someone we would want to have come into the United States.

In our hearing, the representative from the State Department said the State Department personnel who granted visas to these 19 terrorists were heartbroken.

She said it is like when a person hits the little kid who runs out from between the parked cars. It obviously is not the driver's fault, but you feel horrible about it. It is obviously not the fault of the people in the State Department who granted these visas, but they felt horrible about it because they didn't have the information to tell them that those visas should have been denied.

This bill will enable us to put all of that information into one simple database so that our consular offices will know to whom to grant the visas and who should not receive them. It will make a lot of other changes, as Senator FEINSTEIN said, all of which are designed to gain better for the process of admitting people into the country, for knowing when they exit the country, for ensuring that people who come here to study in fact come here and study and don't come on a pretext, as at least one of these terrorists did, and a variety of other things that take advantage of the technology we have today.

The great thing about this bill, as verified by the hearing and some other very hard work Senator FEINSTEIN has done on her own, is to determine that the technology is here. We can apply technology to this problem. The other piece of good news is that it doesn't cost that much, relatively speaking. In fact, we are going to have to employ technology to save money. We can't possibly hire enough people or take all of the time it would take to do this if we don't employ technology.

We are very excited about the prospect of applying technology to a new challenge here in America to close the loopholes in our immigration law, to ensure or at least be a lot more sure that we are not letting terrorists come into this country or stay in this country when they shouldn't be here. I am proud to join my colleague Senator FEINSTEIN in the introduction of this legislation. I hope we can find a way very early on to see that it gets considered in the proper fora so that the full Senate will have an opportunity to support the legislation and support the President, who has called for exactly this kind of approach.

Mr. President, today, Senators FEINSTEIN and I, joined by Senators SNOWE, HATCH, THURMOND, BOND, and KOHL, introduce the Visa Entry Reform Act, legislation that will strengthen our U.S. visa system, and allow better tracking and monitoring of foreign nationals in the United States who present national security risks to our country.

Last week the President signed into law anti-terrorism legislation that will provide many of the tools necessary to keep terrorists out of the United States, and to detain those terrorists who have entered our country. That law provides new, better definitions of what a terrorist organization is, and provides the Attorney General greater authority to detain members of such organizations. It clarifies that individuals who have contributed to such organizations, even if such support went to nonterrorist activities of the organizations, are inadmissible and deportable. The new law also authorizes the tripling of Border Patrol, Customs inspectors, and INS inspectors at the northern border, a minimal addition, given the expected high rates of attrition for these agencies over the next

five years, and the continued and growing need for personnel along the southwest border.

Yesterday, the President announced three initiatives in our fight to track down terrorists: a task force, headed by the deputy assistant director of the FBI for intelligence, to work toward greater coordination of intelligence and law enforcement information on terrorists; a comprehensive study of our never-implemented foreign student tracking system; and an initiative to provide much-needed coordination among Customs and INS officials in the United States, Canada, and Mexico.

These are all important tools, and will be instrumental in our overall efforts to track down terrorists. The legislation that we introduce today will complement our recent efforts. Under the Visa Entry Reform Act of 2001, law enforcement, the Departments of Transportation and State, and all of our intelligence agencies will be connected by a comprehensive database, headed by the Director of Homeland Defense, with necessary shared law enforcement and intelligence information to thwart attempts to enter the country and to find terrorists who have made their way into the United States.

Under our bill, terrorists will be deprived of the ability to present fake or altered international documents in order to gain entrance, or stay here. Foreign nationals will be provided with a new fraud-proof ''SmartVisa'' card, using new technology that would include a person's fingerprints or other forms of ''biometric'' identification. These cards would be used by visitors upon exit and entry into the United States, and would alert authorities immediately if a visa has expired or a red flag is raised by a Federal agency. Our bill would also strengthen other Federal identification documents such as pilots' licenses, visas, immigration work authorization cards, and others by requiring that they be fraud- and tamper-resistant, contain biometric data, and, if applicable, include the visa's expiration date.

Another provision of the bill would require that the 29 nations that participate in the government's visa waiver program be required, after 1 year, to issue tamper-resistant, machine-readable passports. In addition, our bill would require that, after 2 years, all countries that participate include biometric data on their passports. INS inspectors would have to check passport numbers and, where available, biometric information with the new, centralized information database. Countries that participate in the program would be required to report stolen passport numbers to the State Department in order to continue to participate in the program.

Another section of our bill will make a significant difference in our efforts to stop terrorists from ever entering our country. Section six of the bill will require that passenger manifests on all flights scheduled to come to the United States be forwarded in real-time, and then cleared, by the Immigration and Naturalization Service. All cruise and cargo lines and cross-border bus lines would also have to submit such lists to the INS. Our bill also removes a current U.S. requirement that all passengers on flights to the United States be cleared by the INS within 45 minutes of arrival. Clearly, in some circumstances, the INS will need more time to clear all prospective entrants to the United States. These simple steps would give law enforcement advance notice of foreigners coming into the country, particularly visitors or immigrants who pose security threats to the United States.

The Visa Entry Reform Act will also provide much needed reforms and requirements in our U.S. foreign student visa program, which has allowed numerous foreigners to enter the country without ever attending classes and with lax oversight by the Federal Government. The system is rife with abuse, with numerous examples of fraud and bribery by persons seeking student visas.

Just as alarming, in the past decade, more than 16,000 people have entered the United States on student visas from states included on the government's list of terrorist sponsors. Notwithstanding that Syria is one of the countries on the list, the State Department recently issued visas to 14 Syrian nationals so that they could attend flight schools in Fort Worth, TX.

Our legislation would prevent most persons from obtaining student visas if they come from terrorist-supporting states such as Iran, Iraq, Sudan, Libya, and Syria, with the authority of the Secretary of State to waive the bar. Additionally, our bill would require the INS to conduct background checks before the State Department issues the visas. U.S. educational institutions would also be required to immediately notify the INS when a foreign student violates the term of the visa by failing to show up for class or leaving school early.

For the first time since the War of 1812, the United States has faced a massive attack from foreigners on our own soil. Every one of the terrorists who committed the September 11 atrocities were foreign nationals who had entered the United States legally through our visa system. None of them should have been allowed entry due to their ties to terrorist organizations, and yet even those whose visas had expired were not expelled.

Mohamed Atta, for example, the suspected ringleader of the attacks, was allowed into the United States on a tourist visa, even though he made clear his intentions to go to flight school while in the United States. Clearly, at the very least, he should have been queried about why he was using his tourist visa to attend flight school.

We also know that two of the terrorists were on watch lists that should have been provided to the State Department and the INS, in order to prevent their entry to the United States.

Another hijacker, Hani Hanjour, was here on a student visa that had expired as of September 11. Hani Hanjour never attended class. In addition, at least two other visitor visa-holders overstayed their visa. In testimony before my own Senate subcommittee, U.S. officials have told us that they possess little information about foreigners who come into this country, how many there are, and even whether they leave when required by their visas. America is a nation that welcomes international visitors—and should remain so. But terrorists have taken advantage of our system and its openness. Now that we face new threats to our homeland, it is time we restore some balance to our immigration policy.

As former chairman and now ranking Republican of the Judiciary Committee's Terrorism Subcommittee, I have long suggested, and strongly supported, many of the anti-terrorism and immigration initiatives now being advocated by Republicans and Democrats alike. In my sadness about the overwhelming and tragic events that took thousands of precious lives, I am resolved to push forward on all fronts to fight against terrorism. That means delivering justice to those who are responsible for the lives lost on September 11, and reorganizing the institutions of government so that the law-abiding can continue to live their lives in freedom. I hope that we will soon pass, the Congress will pass, the Visa Entry Reform Act. It will make a difference.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank my distinguished colleague from Arizona for those comments. He is very hard working, and it has been a great pleasure for me to be able to work with him. He and I hope to sit down with Senators KENNEDY and BROWNBACK next week. I think all four of us believe that if it is possible to have one bill, we would like to have one bill. We have taken on the technology aspect of our bill. But bottom line, the Senator from Arizona is correct, our Nation has essentially been laid back when it comes to matters of really scrupulously trying to set up a system that can provide a measure of protection for our national security.

It has become very clear now, post September 11, that we must take steps to do so. Otherwise, we are derelict in our duty to protect American citizens. This bill does it.

Because the student visa part of it has been somewhat controversial, this morning I was visited by the chancellor of the California State University system. This is the largest system in the United States, with about 380,000 students. He came in to indicate his support for our bill, for the acknowledgment that he knows that schools across America also have to assume more responsibility to see that there is a system where there is some regulation.

Right now, a student can apply to a number of schools, get accepted to a number, and show up at none. And there is no reporting.

We would change this. The university association will be supportive of these changes.

I am very optimistic that we have an opportunity, in meeting with Senators KENNEDY and BROWNBACK, to put together one bill that could provide some reform to a porous visa entry system.

As I said, I sit as the chair of the Judiciary Committee's Subcommittee on Technology, Terrorism and Government Information. Last month, we held a hearing into the need for new technologies to assist our government agencies in keeping terrorists out of the United States.

The testimony at that hearing was very illuminating. We were given a picture of an immigration system in chaos, and a border control system that acts like a sieve. Agencies don't communicate with each other. Computers are incompatible. And even in instances where technological leaps have been made—like the issuance of more than 4.5 million ''smart'' border crossing cards with biometric data—the technology is not even used.

Let me give some specific examples of the testimony we heard before our subcommittee:

There are 29 countries that now participate in a ''visa waiver'' program that invites 23 million visitors a year to our country. Travelers from these countries do not have to get a visa before entering the United States, so nobody knows when they arrive, and nobody knows whether they leave. Passports don't have to be machine-readable or tamper-proof, and the result is millions of people coming and going with no accountability, and no way to find them if they choose to stay and do mischief.

We also heard in our subcommittee that the student visa program is unregulated and subject to abuse and fraud. Schools don't keep track of students, the INS does not find out when the students leave or whether they even show up for classes, and many students overstay their visas by years. Furthermore, students who apply to many schools can receive multiple documents—called ''I–20'' forms—giving them the right to entry. Because they only need one of these forms, the possibility for fraud is enormous. Additional forms are sold, and many enter the country with no real plans to go to school here at all.

In our hearing, Mary Ryan, the Assistant Secretary of State for Consular Affairs, said that the lack of information sharing is a ''colossal intelligence failure'' and that the State Department ''had no information on the terrorists from law enforcement.'' Personally, I am amazed that a person can apply for a visa, be granted a visa, and that there is no mechanism by which the FBI or CIA can enter a code into the system to raise a red flag on individuals known to have links to terrorist groups and pose a national threat. In the wake of September 11th, it is hard for me to fathom how a terrorist might be permitted to enter the U.S. because our government agencies aren't sharing information.

This was one, sobering hearing. It made it clear to all who were present that our borders act only as a sieve, essentially allowing easy access to all who would do us harm. Something must be done, and something must be done now.

When I arrived in the Senate in 1992, I brought with me the concerns of millions of Californians about the porous nature of the Southwest border. When I tried to address the problems there, I met with the same response over and over again—''nothing can be done.''

But something was done, and our Southwest border is now far more difficult to transit.

Here, too, I am now told that ''nothing can be done'' to keep terrorists from entering the country on student visas, or through the visa waiver program, or through some other program. I am told that commerce and trade are too important. Or that the technology simply does not exist. Or that the agencies involved are incapable of cooperating in a way that would keep our country safe from those who try to enter.

Well, I did not accept those arguments then, and I do not accept them now. There are things we can do to solve some of these problems, and this issue is too important to wait.

Let me talk about how this legislation would address these problems.

First, the most important piece of this solution is the creation of one, central database containing all the information our government has about foreign nationals who cross the border into the United States. Private industry can help in this effort—in fact, I recently met with Larry Ellison, Chairman of Oracle, who wrote me a letter offering the services of his company, free of charge, in the creation of the necessary software.

Right now, our government agencies use different systems, with different information, in different formats. And they often refuse to share that information with other agencies within our own government. This is not acceptable.

When a terrorist presents himself at a consular office asking for a visa, or at a border crossing with a passport, we need to make sure that his name and identifying information is checked against an accurate, up-to-date, and comprehensive database. Period.

My legislation will require the creation of this central database, and will require the cooperation of all U.S. government agencies in providing accurate and compatible information to that system.

Incidentally, this legislation also contains strict privacy provisions, limiting access to this database to authorized federal officials. And the bill contains severe penalties for wrongful access or misuse of information contained in the database.

Second, the legislation I will introduce will include concrete steps to restore the integrity to the immigration and visa process, including the following:

First, the legislation requires all foreign nationals to be fingerprinted, and, when appropriate, submit other biometric data, to the State Department when applying for a visa. This provision should help eliminate fraud, as well as identify potential threats to the country before they gain access.

Second, we include reforms of the visa waiver program, so that any country wishing to participate in that program must quickly provide its citizens with tamper-proof, machine-readable passports, eventually with biometric data to help verify identity at ports of entry.

Third, we establish a robust ''SmartVisa'' program. Newly issued visas must contain biometric data and other identifying information—like more than 4 million already do on the Southwest border—and, just as importantly, our own officials at the border and other ports of entry must have the equipment necessary to read those new smart cards.

Next, we worked closely with the university community in crafting new, strict requirements for the student visa program, to crack down on fraud, make sure that students really are attending classes, and give the government the ability to track any foreign national who arrives on a student visa but fails to enroll in school.

The legislation prohibits the issuance of a student visa to any citizen of a country identified by the State Department as a terrorist-supporting nation. There is a waiver provision to this prohibition, however, allowing the State Department to allow students even from these countries after review and evaluation.

We require that airlines, cruiselines, buslines, and other transportation services provide passenger and crew manifests to law enforcement before arrival, so that any potential terrorists or other wrongdoers can be singled out before they arrive in this country and disappear into the general populace.

The bill contains a number of other related provisions as well, but the gist of this legislation is this:

Where we can provide law enforcement more information about potentially dangerous foreign nationals, we do so;

Where we can reform our border-crossing system to weed out or deter terrorists or others who would do us harm, we do so;

And where we can update technology to meet the demands of the modern war against terror, we do that as well.

As we prepare to modify our immigration system, we must be sure to enact changes that are realistic and

feasible. We must also provide the necessary tools to implement them.

Our Nation will be no more secure tomorrow if we create new top of the line databases and no not see to it that government agencies share critical information.

We will be no safer tomorrow if we do not create a workable entry-exit tracking system to ensure that terrorists do not enter the U.S. and blend into our communities without detection.

And we will be no safer if we simply authorize new programs and information sharing, but do not provide the resources necessary to put the new technology at the border, train agents appropriately, and require our various government agencies to cooperate in this effort.

We have a lot to do and I am confident that we will move swiftly and with great care to address these important issues. The legislation I introduce today is an important, and strong, first step. But this is only the beginning of a long, difficult process.

I urge my colleagues to support us on this legislation. I yield the floor.

Ms. SNOWE. Mr. President, I'm pleased to join with Senators FEINSTEIN and KYL in introducing the Visa Entry Reform Act of 2001.

Both of these leaders have worked feverishly to bring this bipartisan bill to fruition and I have very much appreciated the opportunity to work with them in assembling a strong and meaningful package to help secure our homeland.

The bottom line is, at this extraordinary time, in the wake of horrific attacks from without against innocent lives within our borders, we must take every conceivable step with regard to those variables we can control in securing our Nation. How can we do anything less when it has become so abundantly and tragically apparent that admittance into this country cannot and must not be the ''X-Factor'' in protecting our homeland?

Entry into this country is a privilege, not a right, and it's a privilege that's clearly been violated by evildoers who were well aware of inherent weaknesses in the system. Just look at the story of Mohamed Atta, coming into Miami, he told the INS that he was returning to the U.S. to continue flight training, despite the fact that he presented them with a tourist visa, not the student required visa for his purposes, and they let him in. INS has since said that Atta had filed months earlier to change his status from tourist to student so they let him in, despite long-standing policy that once you leave the country, you're considered to have abandoned your change of status request.

What this bill is about is stopping dangerous aliens from entering our country at their point-of-origin and their point of entry by giving those Federal agencies charged with that responsibility the tools necessary to do the job. Now, some say the tools we need are better technologies, some say better information, some say better coordination. The beauty of this bill is that it stands on all three legs, because I can tell you if there's one thing I learned from my experience in working on these issues on the House Foreign Affairs International Operations Subcommittee it's that we're only going to get to the root of the problem with a comprehensive approach.

This was clear from the aftermath of our investigation of the comings and goings of the mastermind of the 1993 World Trade Center bombing, the radical Egyptian cleric Sheikh Rahman. We found that the Sheikh had entered and exited the country five times totally unimpeded, even after the State Department formally revoked his visa and even after the INS granted him permanent resident status. In fact, in March of 1992, the INS rescinded that status which was granted in Newark, New Jersey about a year before.

But then, unbelievably, the Sheikh requested asylum in a hearing before an immigration judge in the very same city, got a second hearing, and continued to remain in the country even after the bombing, with the Justice Department rejecting holding Rahman in custody pending the outcome of deportation proceedings and the asylum application, stating that ''in the absence of concrete evidence that Rahman is participating in or involved in planning acts of terrorism, the assumption of that burden, upon the U.S. Government, is considered unwarranted.''

To address the trail of errors, I introduced legislation to modernize the State Department's antiquated microfiche lookout system, but as we've painfully learned in the interim, such a system is only as good as the information they can access. That's why we fought tooth and nail to require information sharing between the FBI and the State Department, but even then it was only a watered-down provision that eventually passed into law in 1994, with even that sunsetting in 1997 with a brief extension lapsing in 1998.

So I'm pleased that the terrorism bill we just passed does require information sharing between the State Department and the FBI, but we can and must do more, we must also require information sharing among all agencies like the CIA, DEA, INS, and Customs.

And that's what this bill does, along with my measure that's included to establish ''Terrorist Lookout Committees'' at every embassy, which are required to meet on a monthly basis and report on their knowledge or lack of knowledge of anyone who should be excluded from the U.S. Ultimately, each Deputy Chief of Mission would be responsible for this information, because to paraphrase Admiral Rickover, unless you can identify the person who's responsible when something goes wrong, then you have never had anyone really responsible.

We should also know who and what is in our waters and be pro-active in preventing potential threats from reaching our shores. As I mentioned at a recent Oceans and Fisheries Subcommittee hearing, a terrorist act involving chemical, biological, radiological, or nuclear weapons at one of our seaports could result in the extensive loss of lives. In that light, I'm pleased this bill also includes a measure I developed that requires incoming vessels to submit to the Coast Guard crew and passenger manifests as background on the vessel 96 hours before arrival.

And finally, we ought to ensure that the person standing in front of the INS agent at the border is the same person who applied for that visa. It does no good to do every background check in the world overseas, only to have someone else actually show up at our doorstep. The fact is, we have the so-called ''biometric technology'' available to close this gap, and I'm pleased that my measure requiring fingerprinting for visa applicants both abroad and at the border has been included.

As the President said just the other day, ''We're going to start asking a lot of questions that heretofore have not been asked.'' By giving the Director of Homeland Security the responsibility of developing a centralized ''lookout'' database for all of this information, along with instituting tighter application and screening procedures and increased oversight for student visas, we will close the loopholes and help bring all our Nation's resources to bear in securing our nation.

This is a crucial bill in our war on terrorism and I urge my colleagues to support this bill.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 176—RELATING TO EXPENDITURES FOR OFFICIAL OFFICE EXPENSES

Mr. INHOFE submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 176

Resolved,

SECTION 1. AMENDMENT TO SENATE RESOLUTION 294.

Section 2(3) of Senate Resolution 294, Ninety-sixth Congress, agreed to April 29, 1980, is amended—

(1) by striking ''and'' after ''copies of the book 'We, the People','' and inserting a comma; and

(2) by inserting before the semicolon at the end the following: '', copies of the book 'A Young Person's Guide to the United States Capitol' published by the United States Capitol Historical Society, and copies of the book 'Exploring Capitol Hill: A Kid's Guide to the U.S. Capitol and Congress' published by the United States Capitol Historical Society''.

SEC. 2. COPIES DEEMED TO BE FEDERAL PUBLICATIONS.

Copies of the book 'A Young Person's Guide to the United States Capitol' published by the United States Capitol Historical Society, and copies of the book 'Exploring Capitol Hill: A Kid's Guide to the U.S.